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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 437

THE UNITED STATES OF AMERICA, PETITIONER

vs.

C. T. JAFFRAY, R. H. M. ROBINSON AND S. M. ARCHER, AS TRUSTEES OF THE ESTATE OF MINNESOTA AND ONTARIO PAPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 25, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938

United States Circuit Court of Appe

EIGHTH CIRCUIT.

No. 11,023

AT LAW.

UNITED STATES OF AMERICA, APPELLANT,

vs.

C. T. JAFFRAY, R. H. M. ROBINSON, AND S. ARCHER, AS TRUSTEES OF THE ESTATE OF MINNESOTA AND ONTARIO PAPER COMPANY, A CORPORATION, DEBTOR, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED SEPTEMBER 27, 1937.

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1 Petition.

In The District Court of The United States In and for The District of Minnesota, Fourth Division.

C. T. Jaffray and R. H. M. Robinson, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,

No. 3391. vs. At Law.

United States of America, Defendant.

Come now plaintiffs and bring this their petition against defendant and allege:

I.

This is a proceeding brought under the provisions of the Judicial Code, Section 24 (20), as amended, for the recovery of internal-revenue taxes erroneously and illegally assessed and collected. The taxes sought to be recovered were all paid to and collected by one Levi M. Willcuts as the duly appointed, qualified, and acting collector of internal revenue for the district of Minnesota. Willcuts was such collector from June 1, 1921, to July 31, 1933, inclusive. Since the latter date he has not been and is not now in office as collector of internal revenue.

Whenever in this petition the word "collector" is used, reference is made to said Willcuts as collector of internal revenue for the district of Minnesota.

2 II.

Plaintiffs now are and at all times since July 11, 1934, have been, pursuant to an order of this Court that date made and entered under The Corporate Bankruptcy Act of 1934, the duly appointed, qualified, and acting trustees of the estate of Minnesota and Ontario Paper Company, debtor, hereinafter called the company, a corporation organized and existing under the laws of the State of Maine. The principal office of the company is at 1100 Builders Exchange Building, Minneapolis, Minnesota.

Plaintiff Jaffray is a resident of Minneapolis, Minnesota. Plaintiff Robinson is a resident of Tuxedo Park, Long Island, New York. Plaintiffs' office as trustees is the principal office of the company.

From November 30, 1931, until their appointment as trustees on July 11, 1934, plaintiffs were the duly appointed, qualified, and acting receivers of the company.

Plaintiffs bring this proceeding in their own behalf as trustees and in behalf of the company and its creditors and stockholders. The bringing of this proceeding is authorized by the order of this Court wherein plaintiffs were appointed such trustees.

III.

From 1917 to 1920, inclusive, the company owned shares of capital stock in and for income-tax purposes was affiliated with the following corporations: International Lumber Company, Rainy River Improvement Company, Minnesota, Dakota and Western Railway Company, Falls Lumber and Coal Company, Watrous Island Boom Company, and International Insulation Company. From 1921 to 1925, inclusive, the company owned shares of capital stock in and for income-tax purposes was affiliated with said named corporations except International Insulation Company. From 1926 to 1928, inclusive, the company owned shares of capital stock in
3 and for income-tax purposes was affiliated with all said named corporations together with Minnesota Forest Products Company, a corporation.

During each of said three periods the annual earnings of the company and its affiliates were consolidated for income-tax purposes. All taxes paid on such consolidated earnings have been paid by the company.

IV.

a. On March 14, 1923, the company filed with the collector a tentative return of the consolidated net income of itself and affiliates for the year 1922, and at the time of such filing paid to the collector $17,500 in part payment of such estimated tax.

On June 15, 1923, the company filed with the collector a completed return of the 1922 consolidated net income of itself and affiliates. Said completed return showed a tax of $66,818.77, which amount, except for the payment of $17,500 already made, was paid to the collector as follows:

June 15, 1923	$15,909.39
September 15, 1923	16,704.70
December 15, 1923	16,704.68

b. On June 4, 1927, the company filed with the collector a claim for refund of the entire amount of $66,818.77 paid to him as income tax for 1922. On April 30, 1929, a perfected claim for refund of said tax was filed with the collector.

V.

a. On March 15, 1924, the company filed with the collector a tentative return of the consolidated net income of itself and affiliates for 1923, and at the time of such filing
4 paid to the collector $58,000 in part payment of such estimated tax. On June 14, 1924, the company filed with the collector a completed return of the 1923 consolidated net income of itself and affiliates. Said completed return showed a tax of $166,352.88, which amount, except for the payment of $58,000 already made, was paid to the collector as follows:

June 14, 1924	$25,176.44
September 14, 1924	41,588.22
December 14, 1924	41,588.22

b. On July 21, 1927, the company filed with the collector a claim for refund of $110,241.81 of the $166,352.88 paid to him as income tax for 1923. On or about December 10, 1928, an amended claim for refund was filed with the collector wherein the amount of 1923 taxes claimed as refundable was reduced to $86,355.86. On April 30, 1929, a perfected claim for refund was filed with the collector wherein refund was again claimed of $86,355.86.

VI.

a. On March 14, 1925, the company filed with the collector a tentative return of the consolidated net income of itself and affiliates for 1924, and at the time of such filing paid to the collector $15,000 in part payment of such estimated tax. On June 15, 1925, the company filed with the collector a completed return of the 1924 consolidated net income of itself and affiliates. Said completed return showed a tax of $70,926.94, which amount, except for the payment of $15,000 already made, was paid to the collector as follows:

June 15, 1925	$20,463.47
September 14, 1925	17,731.74
December 14, 1925	17,731.73

5 b. On December 24, 1927, the company filed with the collector a claim for refund of $36,904.69 of the $70,926.94 paid to him as income tax for 1924. On March 13, 1929, the company filed with the collector an amended claim

for refund wherein the amount of 1924 taxes claimed as refundable was reduced to $29,882.76. On April 30, 1929, the company filed with the collector a perfected claim for refund wherein the amount of 1924 taxes claimed as refundable was increased to $49,670.56.

VII.

a. On March 13, 1926, the company filed with the collector a tentative return of the consolidated net income of itself and affiliates for 1925, and at the time of such filing paid to the collector $10,000 in payment of such estimated tax. On June 1, 1926, the company filed with the collector a completed return of the 1925 consolidated net income of itself and affiliates. Said completed return showed a tax of $9,365.77, which amount was less than the sum already paid by $634.23, which last amount defendant refunded to the company on October 23, 1926.

b. On December 24, 1927, the company filed with the collector a claim for refund of $8,515.30 of the $9,365.77 paid to him as income tax for 1925. On March 13, 1929, the company filed with the collector an amended claim for refund wherein the amount of 1925 taxes claimed as refundable was reduced to $6,401.49. On April 30, 1929, the company filed with the collector a perfected claim for refund wherein the amount of 1925 taxes claimed as refundable was further reduced to $3,400.75.

VIII.

Under date of August 31, 1933, the commissioner of internal revenue, hereinafter called the commissioner, sent to plaintiffs as receivers of the company two letters. True
6 copies of said letters are hereto attached as Exhibit A and Exhibit B and by reference are made parts hereof. Exhibit A relates to the claims for refund filed in respect of the taxes paid for 1922 to 1924, inclusive, as aforesaid. Exhibit B relates, among other things, to the claims for refunds filed in respect of the taxes paid for 1925 as aforesaid. By said letters, Exhibits A and B, plaintiffs as receivers of the company were notified that all the claims for refund filed by the company with the collector as hereinbefore stated had been disallowed on a schedule dated July 13, 1933, to the extent indicated in certificates of over-assessment numbered 2011190, 2014278, 2030102, and 2029738. True copies of said certificates of overassessment are hereto attached as Exhibit C, Exhibit D, Exhibit E, and Exhibit F, respectively, and by reference are made parts hereof.

IX.

By certificate of overassessment 2011190, Exhibit C, the commissioner determined that the entire amount of the tax for 1922, $66,818.77, had been overpaid, that refund of $17,500 thereof was barred by the statute of limitations, that $49,318.77, the remainder, would be credited in the amounts of $42,884 and $6,434.77 against additional income taxes claimed by the commissioner to be owing by the company for 1926 and 1927, respectively, and that $24,034.76 in interest, which interest was computed upon $15,909.39 of said $49,318.77 from June 14, 1923, to October 31, 1931, upon $16,704.70 of said $49,318.77 from September 15, 1923, to October 31, 1931, and upon $16,704.68 of said $49,318.77 from December 15, 1923, to October 31, 1931, would be credited against withholding taxes claimed by the commissioner to be owing by the company for 1921. Such credits were made on or about July 13, 1933.

7

X.

By certificate of overassessment 2014278, Exhibit D, the commissioner determined that the tax for 1923 had been overpaid in the amount of $29,427.69, that such overpayment would be credited against additional income taxes claimed by the commissioner to be owing by the company for 1927, and that $12,142.75 in interest, which interest was computed upon said $29,427.69 from December 15, 1924, to October 31, 1931, would be credited in the amounts of $1,235.69 and $10,907.06 against withholding taxes claimed by the commissioner to be owing by the company for 1921 and 1922, respectively. Such credits were made on or about July 13, 1933, except that the credit of $10,907.06, instead of being made against withholding taxes claimed for 1922, was made against withholding taxes claimed for 1930 and 1931.

XI.

By certificate of overassessment 2030102, Exhibit E, the commissioner determined that the tax for 1924 had been overpaid in the amount of $23,904.23, that such overpayment would be credited in the amounts of $11,582.66 and $12,321.57 against additional income taxes claimed by the commissioner to be owing by the company for 1927 and 1928, respectively, and that $8,521.94 in interest, which interest was computed upon $6,172.50 of said $23.904.23 from September 15, 1925, to October 31, 1931, and upon $17,731.73 of said $23,904.23 from December 15, 1925, to October 31, 1931, would be credited against withholding taxes claimed by the commissioner to be owing by the company for 1922. Such credits were made

on or about July 13, 1933, except that the credit of interest, instead of being made against withholding taxes claimed for 1922, was made against withholding taxes claimed by the commissioner to be owing in the amount of $3,038.92 for 1921 and in the amount of $5,483.02 for 1930 and 1931.

8 XII.

By certificate of overassessment 2029738, Exhibit F, the commissioner determined that the tax for 1925 had been overpaid in the amount of $7,800, that such overpayment would be credited in the amount of $5,851.44 against withholding taxes claimed by the commissioner to be owing by the company for 1921 and in the amount of $1,948.56 against additional income taxes claimed by the commissioner to be owing by the company for 1928, and that $3,227.31 in interest, which interest was computed upon $1,948.56 of said amount of $7,800 from March 15, 1926, until October 31, 1931, and computed upon $5,851.44 of said amount of $7,800 from March 15, 1926, until July 10, 1933, would be credited, in the respective amounts of $2,831.25 and $396.06, against withholding taxes claimed by the commissioner to be owing by the company for 1922. Such credits were made on or about July 13, 1933, except that the credit of $5,851.44, instead of being made against withholding taxes claimed for 1921, was made against withholding taxes claimed for 1930 and 1931, and except that the credit of interest was reduced from a total of $3,227.31 to a total of $2,501.09 and as so reduced was made against withholding taxes claimed for 1921.

XIII.

A true copy of the settlement agreement referred to in Exhibits C and D is hereto attached as Exhibit G and by reference is made a part hereof.

XIV.

The credits of $42,884 and $6,434.77 applied in accordance with certificate of overassessment 2011190, Exhibit C, from the 1922 overpayment against additional income taxes claimed for 1926 and 1927, respectively, the credit of $29,427.69 applied in accordance with certificate of overassessment

9 2014278, Exhibit D, from the 1923 overpayment against additional income taxes claimed for 1927, the credits of $11,582.66 and $12,321.57 applied in accordance with certificate of overassessment 2030102, Exhibit E, against additional income taxes claimed for 1927 and 1928, respectively, and the credit of $1,948.56 applied in accordance with certificate of overassessment 2029738, Exhibit F, against income taxes

claimed for 1928, together with the collection of $8,276.92 by the collector on April 23, 1930, hereinafter more fully set out, were and are erroneous and unlawful by reason of the following facts:

a. In February, 1921, and March, 1924, the commissioner assessed an aggregate amount of $759,838.91 as additional taxes upon the 1917 consolidated income of the company and its affiliates. In March, 1924, the commissioner assessed $884,665.66 as additional taxes upon the 1918 consolidated income of the company and its affiliates. Claims for abatement of $497,111.21 of the 1917 assessment were rejected on February 4, 1925. A claim for abatement of the 1918 assessment was rejected January 23, 1925. On January 23, 1925, the commissioner notified the company and its affiliates of his determination of deficiencies of $613,248.82 and $1,403,435.47 in taxes upon the consolidated income of the company and its affiliates for 1919 and 1920, respectively. On February 21, 1925, the company and its affiliates filed petitions with the United States Board of Tax Appeals contesting the assessment of the additional taxes asserted for 1917 and 1918. On March 19, 1925, the company and its affiliates filed petitions with the Board for redetermination of the deficiencies determined for 1919 and 1920.

b. While said proceedings were pending before the Board, the company and its affiliates held conferences with the commissioner and other representatives of the Treasury Department for the purpose of ascertaining and agreeing upon the correct amount of tax owing for each of said years 1917 to 1920, inclusive. In said conferences the facts relating to all items in dispute were ascertained and agreed upon and were embodied in a written stipulation dated February 25, 1926. The first paragraph of said stipulation was as follows:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer," by its counsel, that the deficiency in tax of said taxpayer for the taxable years 1917, 1918, 1919, and 1920 shall be determined and assessed in accordance with the following agreement.

Following that paragraph the facts ascertained and agreed upon were set out in detail as to each item in dispute. The last paragraph of said stipulation was as follows:

It is further stipulated and agreed that the understatement of the amount of the taxable net income as shown by the returns filed by the taxpayer herein for each of the taxable years 1917, 1918, 1919, and 1920 was due to negligence on the part of the taxpayer but without intent to defraud.

Said stipulation was filed with the Board February 26, 1926.

c. On February 25, 1926, the commissioner, acting through his counsel, the solicitor of internal revenue, wrote and delivered to the company the following letter:

Confirming the agreement made with the Commissioner of Internal Revenue on February 24, 1926, you are advised that the amount of the penalty to be assessed against you as the result of the negligent understatement of your tax liability for the taxable years 1917, 1918, 1919, and 1920 will be compromised by accepting a sum equal to 6 per cent per annum on the deficiencies determined and assessed in accordance with the stipulation this date entered into between the taxpayer and the representative of this office, from the date the deficiencies became due and payable to the date of payment.

11 d. On February 26, 1926, the following further written stipulation was signed and filed:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by its attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer," by its counsel, that the taxpayer's deficiency in tax for the taxable years 1917, 1918, 1919, and 1920 shall be determined by the Board of Tax Appeals in accordance with the agreement entered into between the taxpayer and the commissioner on February 25, 1926, a copy of which is hereto attached, marked "Exhibit A," and made a part of this stipulation.

The exhibit A attached to said stipulation was the written agreement referred to in subparagraph b above.

e. On February 26, 1926, the Board entered the following order in respect of said proceedings:

This appeal coming on to be heard on February 26, 1926, the taxpayer being represented by Ralph M. Shaw, Esq., and the commissioner being represented by E. C. Lake, Esq., and it appearing that the parties have entered into a certain stipulation which was filed on this date, and it appearing that the parties have agreed to compute the tax in accordance with

the stipulation aforesaid: Now, therefore, on agreement of counsel for both parties, it is

Ordered, That the tax shall be computed in accordance with the stipulation filed this date and referred to hereinabove. Final determination of the deficiency will be made under rule 50 of the board's Rules of Practice on consent of the parties or on 10 days' notice by either party to the adverse party.

f. On March 6, 1926, the following stipulation was filed with the Board:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by its attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer," by its counsel, that the amount of the deficiency due from the taxpayer or overassessment in the above-entitled appeals for each of the taxable years 1917, 1918, 1919, and 1920 is as follows:

	Tax	Penalty
1917, overassessment	$270,305.51	$227,633.03
1918, overassessment	532,722.18	139,897.55
1919, deficiency	491,360.53	165,834.19
1920, deficiency	920,772.85	255,514.47

12 On the same day, pursuant to said stipulation, the Board entered three orders determining the amount owing for each year involved. The amount owing for 1917 was covered in one order; the amount owing for 1918 was covered in another order; and the amount owing for each of the years 1919 and 1920 was covered in the third order. All the orders were similar in form and content except as to the amounts stated therein. The order relating to 1917 was as follows:

Now on the 6th day of March, 1926, the above-entitled appeal coming on to be heard on the stipulation of the taxpayer and the commissioner, signed and executed by their respective counsel, and it appearing from said stipulation and other documentary evidence submitted that the true tax liability of the Minnesota & Ontario Paper Company and its affiliated corporations for the taxable year 1917 is $531,073.65, of which the sum of $41,540.25 has heretofore been paid, and the sum of $801,379.16 has heretofore been assessed, and it further appearing that there is due a penalty of $227,633.03, no part of which has been assessed or paid:

Now therefore, it is considered and

Ordered that the amount of tax deficiency and penalty due from the taxpayer be, and the same is hereby redetermined for the year 1917 to be $489,533.40 tax and $227,633.03 penalty, and that of the tax heretofore assessed there shall be abated the sum of $270,305.51 and the amount of the penalty of $227,633.03 shall be assessed and paid.

The stipulation referred to in said order is the stipulation quoted in subparagraph f above. The "other documentary evidence" referred to in said order is a computation prepared by representatives of the commissioner and of the company and its affiliates and filed with the Board March 6, 1926; a true copy of said computation is attached as Exhibit H and by reference is made a part hereof. Said computation was made pursuant to and in accordance with the stipulation referred to in subparagraph b above and the letter of the Commissioner referred to in subparagraph c above.

g. Thereafter, pursuant to said orders of the Board, the commissioner caused the collector to make, and on March 12, 1926, the collector did make, demands upon the company for payment, as separate items, of the amount of the de-
13 ficiency and the amount of interest or so-called penalty thereon computed up to and including March 15, 1926, for each of said years 1917 to 1920, inclusive. On March 22, 1926, in compliance with said demands, the company paid to the collector $3,044,807.39, the total of said various items, of which total $791,197.13 was such interest or so-called penalty, $788,879.21 thereof being computed in and shown by sheet 6 of Exhibit H, and $2,317.92 thereof being further interest for the years 1919 and 1920, in the respective amounts of $804.33 and $1,513.59, collected and paid in accordance with Section 283(d) of the Revenue Act of 1926.

h. On June 15, 1927, the company filed with the collector a consolidated return of income for 1926 and took as a deduction $791,100.51 of said amount of $791,197.13. Said deduction, after certain adjustments thereafter made, caused a consolidated net loss of $541,822.10, upon which no tax was due or payable. The commissioner disallowed $790,455.20 of the deduction and thereby wiped out the net loss, and on October 28, 1931, he advised the company that his audit of the return disclosed a tax liability of $41,566.02, which amount, together with interest of $11,539.98, or a total of $53,106.00, was assessed on October 31, 1931. Thereafter on July 13, 1933, the commissioner issued a certain certificate of overassessment bearing the number 1316756, a true copy of which

is hereto attached as Exhibit I and by reference is made a part hereof. By said certificate $10,222.00 of the total amount assessed on October 31, 1931, as aforesaid was abated, leaving a balance on account of taxes and interest claimed as owing for 1926 as follows: income taxes, $33,565.47; interest thereon to October 31, 1931, $9,318.53; total, $42,884.00. The total amount so claimed as owing was collected and satisfied on or about July 13, 1933, by application thereto as a credit of the 1922 overpayment hereinbefore referred to, all as set out in paragraph IX above.

14 i. On June 15, 1928, the company filed with the collector a consolidated return of income for 1927. In said return the company deducted the amount of the 1926 consolidated net loss, which deduction, after certain adjustments thereafter made, resulted in a net loss for 1927 of $226,235.29. Disallowance of $790,455.20 of the deduction for 1926, all as set forth in subparagraph h above, wiped out the net loss for said year and deprived the company of its right to apply the same against 1927 income, and, pursuant to said disallowance, the commissioner on October 31, 1931, assessed a tax for 1927 of $50,010.72 together with interest of $10,883.84, a total of $60,894.56. Thereafter, on July 13, 1933, the commissioner issued a certain certificate of overassessment bearing the number 1316757, a true copy of which is hereto attached as Exhibit J and by reference is made a part hereof. By said certificate $13,449.44 of the total amount assessed on October 31, 1931, as aforesaid was abated, leaving a balance on account of taxes and interest claimed as owing for 1927 as follows: income taxes, $38,965.14; interest thereon to October 31, 1931, $8,479.98; total, $47,445.12. The total amount so claimed as owing was collected and satisfied on or about July 13, 1933, by application thereto as credits of part of the 1922 overpayment, the 1923 overpayment, and part of the 1924 overpayment hereinbefore referred to, all as set out in paragraphs IX, X, and XI above.

j. On May 11, 1929, the company filed with the collector a consolidated return of income for 1928. Said return, after making allowance for the 1927 consolidated net loss of $226,235.29, disclosed a consolidated net loss for 1928 of $101,961.09. Disallowance of $790,455.20 of the deduction for 1926, all as set forth in subparagraph h above, wiped out the 1927 consolidated net loss, as set forth in subparagraph i above, and said 1928 consolidated net loss, and, pursuant to
15 said disallowance, the commissioner on October 31, 1931, made an assessment of taxes for 1928 in the amount of $42,166.52 and interest thereon of $6,646.71, which

amounts, together with a previous assessment, made April 26, 1930, of $7,758.58 in taxes and $518.34 in interest thereon (which last amounts had been paid to the collector prior to October 31, 1931, as hereinafter set out in paragraph XV), made a total of $57,090.15. Thereafter, on July 13, 1933, the commissioner issued a certain certificate of overassessment bearing the number 2223612, a true copy of which is hereto attached as Exhibit K and by reference is made a part hereof. By said certificate $34,543.10 of the total amount assessed for 1928 was abated, leaving a balance on account of taxes and interest claimed as owing for that year as follows: income taxes, $12,774.52; interest thereon to October 31, 1931, $1,495.61; total, $14,270.13. The total amount so claimed as owing was collected and satisfied on or about July 13, 1933, by application thereto as credits of part of the 1924 overpayment and part of the 1925 overpayment hereinbefore referred to, all as set out in paragraphs XI and XII above.

XV.

a. On April 23, 1930, pursuant to a demand of the collector, the company paid to him $7,758.58, together with interest thereon of $518.34, as tax claimed by the commissioner to be owing by the company for 1928. Said tax and interest were not owing if the company was entitled to deduct from 1926 income the $790,455.20 disallowed by the commissioner as hereinbefore stated.

b. On February 9, 1932, petitioners as receivers of the company filed a claim for refund of the $7,758.58 paid to the collector. A true copy of said claim is hereto attached as Exhibit L and by reference is made a part hereof. Said claim for refund was denied by the commissioner on July 13, 1933,

as shown by Exhibit B hereto attached.

16 XVI.

The interest credit of $24,034.76, described in paragraph IX, the interest credit of $1,235.69, described in paragraph X, the interest credit of $3,038.92, described in paragraph XI, and the interest credit of $2,501.09, described in paragraph XII, all of which credits were made against withholding taxes claimed by the commissioner to be owing by the company for 1921, were and are erroneous and unlawful by reason of the following facts:

a. During and since 1921 the company has owned all the capital stock of Ontario and Minnesota Power Company, Limited, an Ontario corporation, and the latter, together with plaintiff, has owned all the capital stock of Fort Frances Pulp

and Paper Company, Limited, hereinafter called Fort Frances.

b. During all such time Fort Frances has been engaged in the manufacture of newsprint at Fort Frances, Ontario, and for that purpose has used a plant leased from the Ontario and Minnesota Power Company, Limited. At no time has Fort Frances maintained any sales office or sales representative in the United States.

c. During 1921 Fort Frances marketed most of its product under a contract with the company. By the terms of that contract Fort Frances agreed to sell and the company agreed to buy, at specified prices with delivery f. o. b. Fort Frances, Ontario, newsprint produced by the former, and as orders were received from the company by Fort Frances, at Fort Frances, Ontario, the latter set aside the quantities required, prepared them for shipment, made delivery to the carrier at Fort Frances, and at the same time invoiced the company for all loadings. The company as purchaser then assumed all responsibility, paid all transportation charges, furnished all shipping instructions, and, so far as shipments into the United States were concerned, arranged for and signed all customs clearings papers as importer. There-
17 after the company resold the newsprint so purchased to its own customers for consumption, and in connection therewith made all financial and credit arrangements; no accounting was made by the company to Fort Frances in respect of such resales.

d. The books of both the company and Fort Frances have at all times mentioned been kept on the accrual basis, and returns of income have been made on that basis. Prior to 1926, however, neither the company nor Fort Frances entered on its books any accruals in respect of any interest on unpaid balances owing for newsprint purchased by the former from the latter as aforesaid. In that year changes were made in the accounting practices of both corporations and the company set up accrued interest on such balances for 1925 and 1926 on open accounts in favor of Fort Frances. In 1927 further accounting changes were made and changes were then set up on the company's books for interest accrued on such balances owing Fort Frances for 1921 and other years. The amount entered for 1921 was $164,525.98. Payment of the accruals entered as aforesaid was in no case made before entry of the item on the books.

e. During 1921 the company owned bonds of Ontario and Minnesota Power Company, Limited. The amount due the

company in 1921 in interest upon such bonds was in excess of the interest subsequently entered for that year against the company in favor of Fort Frances upon unpaid balances owing for newsprint purchased as aforesaid.

f. On or about March 15, 1922, the company filed with the collector for the year 1921 on a form designated Form 1042 its "Annual Return of Income Tax to be Paid at Source" and paid the withholding tax shown due thereon. In
18 said return no report was made or tax paid in respect of any interest owed Fort Frances upon unpaid balances for newsprint purchased in 1921 from Fort Frances as aforesaid.

g. Defendant took no steps and entered upon no proceedings to collect any withholding tax claimed to be owed by the company by reason of said interest item of $164,525.98 until on or about July 7, 1933, at which time the commissioner assessed against plaintiffs as receivers of the company a withholding tax thereon of $16,452.60 together with a penalty of $4,113.15, a total of $20,565.75. Thereafter, on or about July 13, 1933, said total amount so claimed as owing, together with interest thereon of $10,556.14 computed as follows:

On $4,113.15	from 3-15-22 to 7-10-33	$2,731.58
On 4,113.15	from 6-15-22 to 7-10-33	2,669.89
On 4,113.15	from 9-15-22 to 7-10-33	2,608.19
On 4,113.15	from 12-15-22 to 7-10-33	2,546.48
$16,452.60		$10,556.14

was, except as to $311.43 thereof, collected and satisfied by application thereto as credits of the 1922 interest item of $24,034.76, as set forth in paragraph IX above, of the 1923 interest item of $1,235.69, as set forth in paragraph X above, of the 1924 interest item of $3,038.92, as set forth in paragraph XI above, and of the 1925 interest item of $2,501.09, as set forth in paragraph XII above.

Wherefore plaintiffs pray the judgment of this Court that they are entitled to recover of the defendant One Hundred Eighteen Thousand Seven Hundred Twenty-seven and 61/100 Dollars ($118,727.61) with interest thereon according to law as follows:

19 On $15,909.39 of said amount from June 14, 1923,
On $16,704.70 of said amount from September 15, 1923,
On $16,704.68 of said amount from December 15, 1923,
On $29,427.69 of said amount from December 15, 1924,
On $6,172.50 of said amount from September 15, 1925,

On $17,731.73 of said amount from December 15, 1925,
On $1,948.56 of said amount from March 15, 1926,
On $5,851.44 of said amount from March 15, 1926,
On $7,758.58 of said amount from April 23, 1930,

together with their costs and disbursements, less, however, the amount of $22,241.52, representing overpayments in the amounts of $10,907.06, $5,483.02, and $5,851.44 for the years 1923, 1924, and 1925, respectively, applied as credits against withholding taxes owed by the company for 1930 and 1931, all as set forth in paragraphs X, XI, and XII above.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiffs, 1260 Northwestern Bank Building, Minneapolis, Minnesota.

COBB, HOKE, BENSON, KRAUSE & FAEGRE,
Of Counsel.

State of Minnesota,
County of Hennepin—ss.:

C. T. Jaffray, being first duly sworn, says that he is one of the plaintiffs in the above-entitled action; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

C. T. JAFFRAY.

Subscribed and sworn to before me this 29th day of August, 1934.

E. M. MERRICK,
Notary Public, Hennepin County, Minn.

My Commission Expires Oct. 12, 1937.

(Notarial Seal)

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20 Exhibit A.

Treasury Department
Washington.

Office of
Commissioner of Internal
Revenue

Aug. 31, 1933.

Address Reply to
Commissioner of Internal
Revenue and refer to
IT:C:CC-4
CCP

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

In re: Refund Claims for years: 1922, 1923, 1924.
Amounts: $66,818.77, $110,241.81,
$86,355.86 (2) $36,904.69, $29,882.76 and
$49,670.56.

Sirs:

In accordance with the provisions of section 3226, Revised Statutes, as amended, and as further amended by section 1103 of the Revenue Act of 1932, you are hereby notified that your claims for refund of taxes were disallowed to the extent indicated in certificates of overassessment numbered 2011190, 2014278, 2030102, on a schedule dated July 13, 1933.

By direction of the Commissioner:

Respectfully,
CHAS. T. RUSSELL,
Deputy Commissioner.
By T. F. Langley,
Head of Division.

---

21 Exhibit B.

Treasury Department
Washington.

Office of
Commissioner of
Internal Revenue

Aug. 31, 1933.

Address Reply to
Commissioner of Internal
Revenue and refer to
IT:C:CC-4
CCP

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

In re: Refund Claims for years: 1925, 1928.
Amounts: $8,815.30, $6,401.49,
$3,400.75 and $7,758.58.

Sirs:

In accordance with the provisions of section 3226, Revised Statutes, as amended, and as further amended by section 1103

of the Revenue Act of 1932, you are hereby notified that your claims for refund of taxes were disallowed to the extent indicated in certificates of overassessment numbered 2029738 2223612, on a schedule dated July 13, 1933.

By direction of the Commissioner:

Respectfully,
CHAS. T. RUSSELL,
Deputy Commissioner.
By T. F. Langley,
Head of Division.

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22 Exhibit C.

Treasury Department

Office of
Commissioner of Internal Revenue
Washington

Income Tax Unit
IT:C:CC

Certificate Of
Overassessment
Number: 2011190
Allowed: $49,318.77
Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1922 indicates that the tax assessed for that year was in excess of the amount due:

Income tax assessed:

Original, June 1923, #400074	$66,818.77
Correct income tax liability	None
Overassessment	$66,818.77
Barred by statute of limitations	17,500.00
Overassessment allowable	$49,318.77

(See page 2 attached)

Page Tightly Bound

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

Abated: $
Credited: $42,884.00
To Tax. Year Addtl. 1926

Credited: $ 6,434.77
To Tax. Year Addtl. 1927

Tent. Int.
Credited: $24,034.76
To Tax. Year Addtl. 1921

Refunded: $
Interest: $

23 The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

In the determination of this overassessment the grounds set forth in your claim for refund of $66,818.77 have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

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24 Exhibit D.

Treasury Department
Office of
Commissioner of Internal Revenue
Washington

Income Tax Unit
IT:C:CC

Certificate Of
Overassessment
Number: 2014278
Allowed: $29,427.69
Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1923 indicates that the tax assessed for that year was in excess of the amount due:

Income tax assessed:	
Orginal, June 1924, #400056	$166,352.88
Correct income tax liability	136,925.19
Overassessment	$ 29,427.69

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

In the determination of this overassessment the grounds set forth in your claim for refund of $110,241.81, and your two claims for refund of $86,355.86, each, have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

income tax return for the year in which received.

Page Tightly Bound

Abated: $
Credited: $29,427.69
To Tax. Year Addtl. 1927

Tent. Int.
Credited: $ 1,235.69
To Tax. Year Addtl. 1921

Tent. Int.
Credited: $10,907.06
To Tax. Year 1922

Refunded: $
Interest: $

Exhibit E.

Treasury Department

Office of
Commissioner of Internal Revenue
Washington

Income Tax Unit
IT:C:CC

Certificate Of
Overassessment
Number: 2030102
Allowed: $80,450.55
Schedule No. 50519

Mr. C. T. Jaffray and Mr. R. H. M. Robinson,
Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1924 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account, June, #400150	$ 70,926.94	
Additional, June 6, 1931, list #1, page 2, line o	41,851.55	$14,694.77
Total assessed	$112,778.49	$14,694.77
Correct income tax liability	47,022.71	None
Overassessment	$ 65,755.78	$14,694.77

In the determination of this overassessment the grounds set forth in your claims for refund of $36,904.69, $29,882.76, and $49,670.56 have been given careful consideration and to

Note—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received.

the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

(See page 2 attached)

The amount of the overassessment will be abated, credited or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

Abated: $56,546.32
Credited: $11,582.66
To Tax. Year Addtl. 1927.

Credited: $12,321.57
To Tax. Year Addtl. 1928

Tent. Int.
Credited: $8,521.94
To Tax. Year Addtl. 1922

Refunded: $
Interest: $

26 This overassessment is in accordance with the decision of the United States Board of Tax Appeals dated June 22, 1933, docket #52110.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

27

Exhibit F.

Treasury Department

Office of
Commissioner of Internal Revenue
Washington

Income Tax Unit
IT:C:CC

Certificate Of
Overassessment
Number: 2029738
Allowed: $12,193.99
Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1925 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original, June 1926, #400,220	$ 9,365.77	
Additional, June 6, 1931, list #1, page 2, line 1	3,344.96	$ 1,049.03
Total assessed	12,710.73	1,049.03
Correct income tax liability	1,565.77	None
Overassessment	$11,144.96	$ 1,049.03

(See page 2, attached)

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

Note—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received.

Abated: $4,393.99
Credited: $5,851.44
To Tax. Year Addtl. 1921

Tent. Int.
Credited: $1,948.56 Credited: $2,831.25
To Tax. Year Addtl. 1928 To Tax. Year Addtl. 1922

Addtl. Int.
Refunded: $ Credited: $ 396.06
Interest: $ To Tax. Year Addtl. 1922

28 The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

In the determination of this overassessment the grounds set forth in your claims for refund of $8,815.30, $6,401.49, and $3,400.75, have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

This overassessment is in accordance with the decision of the United States Board of Tax Appeals dated June 22, 1933, Docket #51134.

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29 Exhibit G

Treasury Department
Internal Revenue Service
Form 866-CR
GC:R:ECH-C1-6413

Agreement as to Final Determination of Tax Liability

This Agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between

Name and Address	State of Incorporation	Period
Minnesota & Ontario Paper Company 1100 Builders Exchange, Minneapolis, Minnesota	Maine	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Falls Lumber & Coal Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
International Insulation Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927, 1928

International Lumber Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years, 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Minnesota, Dakota & Western Railway Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Minnesota Forest Products Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Rainy River Improvement Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927, and 1928
Watrous Island Boom Company 1100 Builders Exchange Minneapolis, Minnesota		Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928

taxpayers affiliated under Section 240 of the Revenue Acts of 1921, 1924 and 1926 and Section 142 of the Revenue Act of 1928, having their principal places of business at the address shown above and the Commissioner of Internal Revenue:

30 Whereas, there has been a determination of the tax liability of said taxpayers in respect of income tax imposed by the Revenue Acts of 1921, 1924, 1926 and 1928, for each taxable period stated above falling under the provisions of those acts in the sum of

$ 17,500.00 for the calendar year 1922,
$136,925.19 for the calendar year 1923,
$ 47,022.71 for the calendar year 1924,
$ 1,565.77 for the calendar year 1925,
$ 33,565.47 for the calendar year 1926,
$ 38,965.14 for the calendar year 1927, and
$ 20,533.10 for the calendar year 1928.

exclusive of any penalty or interest applicable thereto as provided by law:

Now, This Agreement Witnesseth, that said taxpayers and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if this agreement is approved

by the Secretary of the Treasury, or the Under Secretary, within one year from the date this agreement is signed by said taxpayers.

Reserving, however, to the taxpayers the right to contest the disallowance of the deduction claimed for the year 1926 in the amount of $790,455.20, which amount was paid, on March 22, 1926, to the United States Government in connection with the payment of additional Federal income, war-profits and excess-profits taxes for the calendar years 1917 to 1920, inclusive, and which amount the taxpayers contend was deductible as interest on deficiencies in taxes, and/or was deductible as a penalty, which contentions the Government denies, and reserving to the taxpayers the right to any benefit from the reduction in Federal income taxes, for the years 1926, 1927 and 1928, that will result in the event of a final conclusion of the issues favorable to the taxpayers.

Reserving also to the taxpayers expressly any and all rights which might hereafter accrue to them under Section 1107 of the Revenue Act of 1932 or any similar provision hereafter enacted, and it is stipulated that the execution hereof shall not preclude the taxpayers from recovering any refunds specified thereunder,—said Section 1107 relating to payments under Section 15 a of Interstate Commerce Act.

Provided also that nothing in this agreement shall be determinative of the liability of the Minnesota & Ontario Paper Company for the taxes provided in Section 237 of the Revenue Acts of 1921, 1924, and 1926 on account of interest paid by that company to the Fort Frances Pulp and Paper Company, Limited, A Canadian Corporation, Fort Frances, Ontario.

31 In Witness Whereof, the Commissioner and the undersigned corporations have subscribed their names to these presents in duplicate.

Signed this 12 day of June, 1933.

(Seal)

MINNESOTA & ONTARIO PAPER COMPANY,

Parent.

By C. T. Jaffray,
By R. H. M. Robinson,

By .....,

Receivers.

Signed this 12 day of June, 1933.

(Seal)

FALLS LUMBER & COAL COMPANY,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By C. S. Pope, Secretary.

(Signature and Title.)

Signed this 12 day of June, 1933.

(Seal)

THE INSULITE COMPANY, formerly the International Insulation Company,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By C. S. Pope, Secretary.

(Signature and Title.)

Signed this 12 day of June, 1933.

(Seal)

INTERNATIONAL LUMBER COMPANY,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By C. S. Pope, Secretary.

(Signature and Title.)

Signed this 12 day of June, 1933.

(Seal)

MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By A. A. Figen, Secretary.

(Signature and Title.)

Signed this 12 day of June, 1933.

(Seal)

MINNESOTA FOREST PRODUCTS COMPANY,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By C. S. Pope, Secretary.

(Signature and Title.)

Signed this 12 day of June, 1933.

(Seal)

RAINY RIVER IMPROVEMENT COMPANY,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By C. S. Pope, Secretary.

(Signature and Title.)

Signed this 12 day of June, 1933.

(Seal)

WATROUS ISLAND BOOM COMPANY,

(Subsidiary.)

By R. H. M. Robinson, Vice-Pres.

(Signature and Title.)

By C. S. Pope, Secretary.

(Signature and Title.)

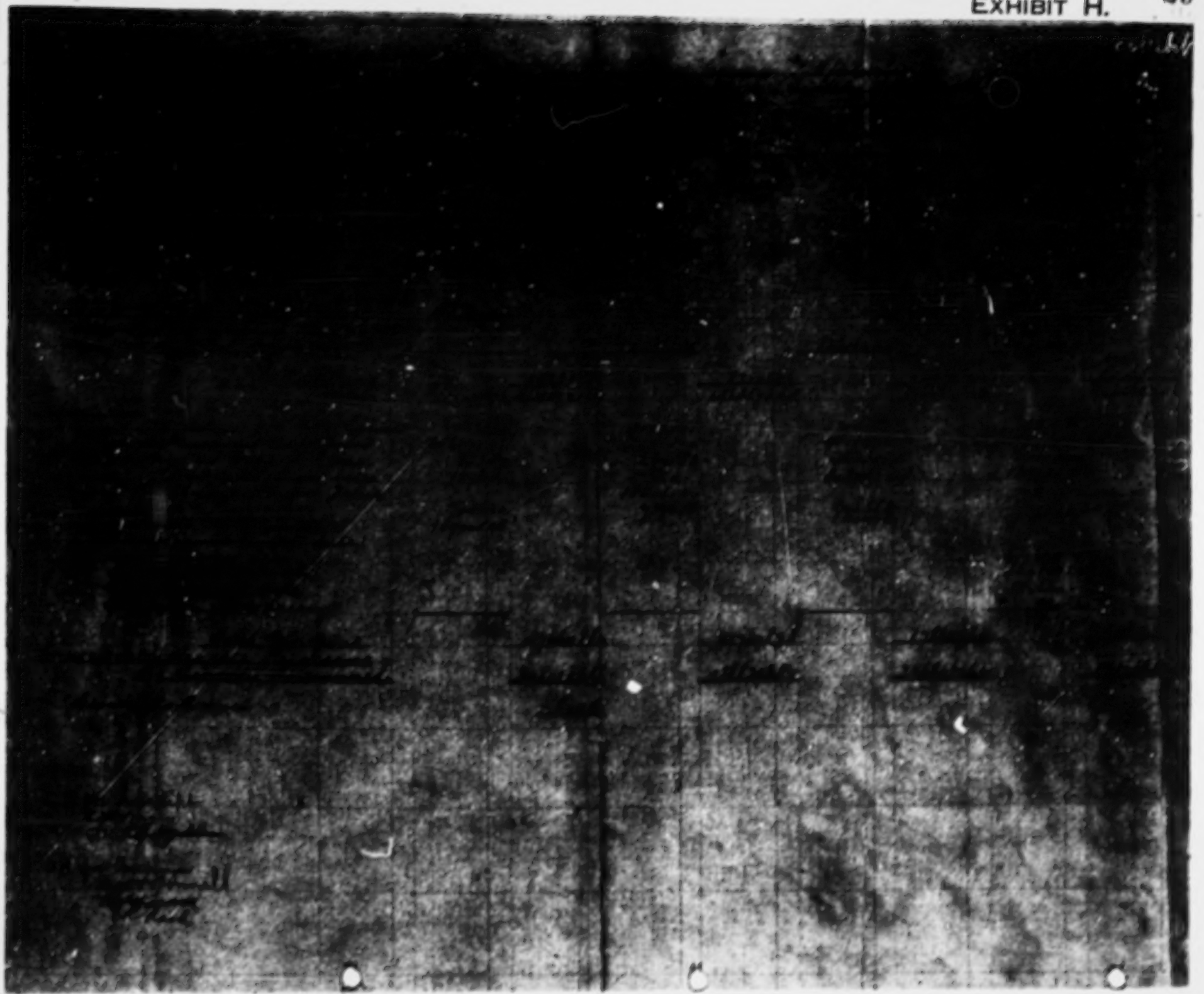
Signed this 7 day of July, 1933.

GUY T. HELVERING,
Commissioner of Internal Revenue.

The above agreement has been approved by the Secretary of the Treasury, or the Under Secretary, in accordance with the provisions of Section 606 of the Revenue Act of 1928, the approval being specifically enumerated on—

Schedule No. 6829.

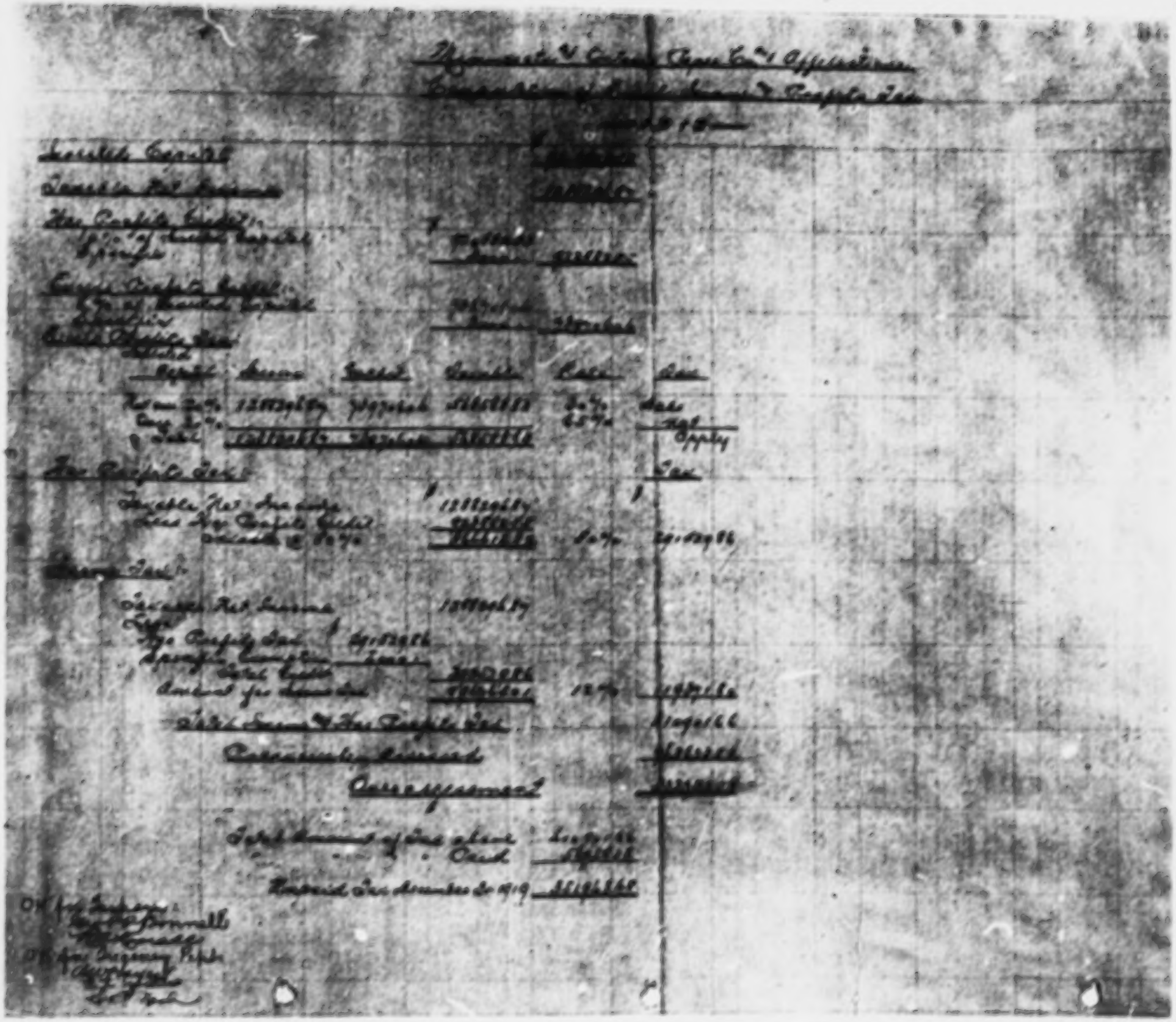
Dated July 7, 1933.



[redacted]

OK for payment
[illegible]
for Treasury Dept.

Manufacturing Concerns Capital & Affiliations
Comparative Gross Income & Profit Tax
— 1917 —



Statements of Crown Paper Company Affiliations
Comparative Income & Profit Loss Statements

— 1919 —

— 1920 —

Minnesota & Ontario Paper Co.

Statement of Shipments

Account of Shipments	1917 Rainy Lake	1916 Sturgeon			
Data from which Statement made: Account of Shipments					
from 16-1916 to Mond receipts 7 cars from	65	23			
Mond 15-1916	do.	7 cars			
June 15-1917	do.	6 cars 8 cars			
July 15-1917	do.	6 cars 6 cars			
Aug 15-1917	do.	6 cars 8 cars			
Mond 15-1916	do.	6 cars		1228.48	44288.45
June 15-1916	do.	8 cars 8 cars		1228.49	42349.84
July 15-1916	do.	8 cars 6 cars		1228.43	40852.24
Aug 15-1916	do.	8 cars 8 cars		1228.47	38492.22
Mond 15-1916	do.	8 cars			
June 15-1916	do.	8 cars 8 cars			
July 15-1916	do.	8 cars 6 cars			
Aug 15-1916	do.	8 cars 8 cars			
Total Shipments	1166.98	2561.11	1301.35	1166.98	

OK for the Bookkeeper
Chief Cruiser

OK for Survey Dept.
Chief Cruiser

38

-7-

Manuscript Schedule

Cash Contributions

Year			
1917	[illegible]	[illegible]	[illegible]
1918	[illegible]	[illegible]	[illegible]
1919	[illegible]	[illegible]	[illegible]
1920	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]

OK for the Secretary:
[illegible]

OK for Treasury Dept.
[illegible]

Minnesota & Ontario Paper Co. & Affiliations

Summary of Taxes Assessed, Paid & to be Paid.

Year	Assessed Value	Tax	Paid	Tax to be Paid
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

41

Exhibit I.

Treasury Department

Office of
Commissioner Of Internal Revenue
Washington.

Income Tax Unit
IT:C:CC

Certificate of
Overassessment
Number: 1316756
Allowed: $10,222.00
Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1926 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account #857857	None	None
Additional, October 31, 1931, list #5, page 1, line 0	$ 41,566.02	$ 11,539.98
Total assessed	$ 41,566.02	$ 11,539.98
Correct tax liability	33,565.47	9,318.53
Overassessment	$ 8,000.55	$ 2,221.45

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made ac-

3—11,023

Page Tightly Bound

tax return for the year in which received.

cordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

Abated: $10,222.00
Credited: $
To Tax. Year
Credited: $
To Tax. Year
Refunded: $
Interest: $

42

Exhibit J.

Treasury Department

Office of
Commissioner Of Internal Revenue
Washington.

Income Tax Unit
IT:C:CC

Certificate of
Overassessment
Number: 1316757
Allowed: $13,449.44
Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1927 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account, #858039	None	None
Additional, October 31, 1931, list #5, page 1, line 1	$ 50,010.72	$ 10,883.84
Total assessed	50,010.72	10,883.84
Correct tax liability	38,965.14	8,479.98
Overassessment	$ 11,045.58	$ 2,403.86

Note—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

Abated: $13,449.44
Credited: $
To Tax. Year

Credited: $
To Tax. Year

Refunded: $
Interest: $

43

Exhibit K.

Treasury Department

Office of
Commissioner Of Internal Revenue
Washington.

Income Tax Unit
IT:C:CC

Certificate of
Overassessment
Number: 2223612
Allowed: $34,543.10
Schedule No. 50519

Mr. C. T. Jaffray and Mr. R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1928 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account #857787	None	None
Additional, April 26, 1930, account A-520105, 1930	$ 7,758.58	$ 518.34
Additional, October 31, 1931, list # 5, page 1, line 2	42,166.52	6,646.71
Total Assessed	49,925.10	7,165.05
Correct tax liability	20,533.10	2,013.95
Overassessment	$ 29,392.00	$ 5,151.10

In the determination of this overassessment the grounds set forth in your claim for refund of $7,758.58 have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

(See page 2 attached.)

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

H. B. ROBINSON,
Head of Division.

Abated: $34,543.10
Credited: $
To Tax. Year
Credited: $
To Tax. Year
Refunded: $
Interest: $

Note—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received.

44 The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 322 of the Revenue Act of 1928.

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45 Exhibit L.

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Claim.

To be Filed with the Collector where Assessment was made or Tax Paid.

Collector's Stamp
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☐Refund of Tax Illegally Collected.

☐Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐Abatement of Tax Assessed (not applicable to estate or income taxes).

State of Minnesota,
County of Hennepin—ss:

Name of taxpayer or purchaser of stamps: C. T. JAFFRAY AND R. H. M. ROBINSON Receivers For Minnesota and Ontario Paper Company

Business address: 1100 Builders Exchange Building, (Street) Minneapolis, Minnesota. (City) (State)

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed St. Paul, Minnesota.

2. Period (if for income tax, make separate form for each taxable year) from June 1, 1928, to December 31, 1928.

3. Character of assessment or tax Corporation Income Taxes.

4. Amount of assessment, $7,758.58; dates of payment April 23, 1930.

5. Date stamps were purchased from the Government .....

6. Amount to be refunded $7,758.58.

7. Amount to be abated (not applicable to income or estate taxes) $.....

8. The time within which this claim may be legally filed expires, under Section 322 (h) of the Revenue Act of 1928, on April 23, 1932.

46 The deponent verily believes that this claim should be allowed for the following reasons:

Reference is herewith made to a "Statement of Objections" dated January 27, 1932, filed by C. T. Jaffray and R. H. M. Robinson, Receivers For Minnesota and Ontario Paper Company, against the additional assessment of corporation income taxes for years, 1926, 1927, and 1928, and on basis of said statement, the taxpayer is entitled to a refund for the year 1928 amounting to $7,758.58 plus interest thereon as provided by law.

All of the facts recited in said statement are incorporated herein by reference with the same force and effect as if fully rewritten herein.

Signed C. T. JAFFRAY AND R. H. M. ROBINSON,
Receivers For Minnesota and Ontario Paper Company.
By C. T. Jaffray,
and By R. H. M. Robinson.

Sworn to and subscribed before me this 8th day of February, 1932.

E. M. MERRICK,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 12, 1937.

(Endorsed): Filed August 29, 1934, Margaret L. Mullane, Clerk, By Thomas H. Howard, Chief Deputy.

47 (Affidavit of Service of Petition on United States Attorney.)

State of Minnesota,
County of Hennepin—ss.:

Frank Janes, being duly sworn, says that on the 30th day of August, 1934, in the City of St. Paul in the State and District of Minnesota, he served a copy of the petition in the above entitled matter, which petition was filed with the Clerk of the above named court on August 29, 1934, upon Hon. George F. Sullivan, United States Attorney in and for said District, personally by delivering and handing to said George F. Sullivan, as such United States Attorney, a true and correct copy of said petition.

FRANK JANES.

Subscribed and sworn to before me this 31st day of August, 1934.

(Seal) FRANK S. KEENAN,
Notary Public, Hennepin County, Minn.

My Commission Expires Mar. 21, 1937.

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48 (Affidavit of Service of Petition on Attorney General of the United States.)

State of Minnesota,
County of Hennepin.—ss.:

Juliana Halvorson, being first duly sworn, says that on August 31st, 1934, in the City of Minneapolis, Hennepin County, Minnesota, she caused a copy of the petition in the above entitled matter, which said petition was filed with the Clerk of the above Court, on August 29, 1934, to be mailed to and served upon the Attorney General of the United States by depositing a true and correct copy of said petition properly enveloped and sealed with postage prepaid and registered and addressed to The Attorney General of the United States at Washington, District of Columbia, in the post office at Minneapolis, Minnesota, where affiant and Messrs. J. B. Faegre and Hayner N. Larson, attorneys for the plaintiffs reside; that there is a regular communication by mail between the places of residence of the attorneys for the plaintiffs and Washington, District of Columbia.

JULIANA HALVORSON.

Subscribed and sworn to before me this 31st day of August, 1934.

FRANK S. KEENAN,
Notary Public,
Hennepin County, Minn.

(Seal)
My Commission Expires Mar. 21, 1937.

(Endorsed): Filed Sept. 1, 1934. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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49 (Demurrer of Defendant to Complaint and Marshal's Return of Service.)

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray and R. H. M. Robinson, As Trustees of the Estate of Minnesota and Ontario Paper Company, A Corporation, Debtor, Plaintiffs,
No. 3391. vs. Law.
United States of America, Defendant.

Comes now the defendant and demurs to the complaint of the plaintiff herein on the following grounds:

I.

That the Court has not jurisdiction of the subject of the action.

II.

That the facts stated therein do not constitute a cause of action.

Dated: January 22, 1935.

GEORGE F. SULLIVAN,
United States Attorney,
221 Federal Courts Building,
Saint Paul, Minnesota.

To the Clerk of the United States District Court:

Please place the above demurrer on for hearing at the special term of the Court in the Fourth Division to be held in Minneapolis on February 11, 1935.

GEORGE F. SULLIVAN,
United States Attorney.

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50 Return on Service of Writ.

United States of America,
District of Minnesota—ss.:

I hereby certify and return that I served the annexed Demurrer on the therein-named Hayner N. Larson, attorney, by handing to and leaving a true and correct copy thereof with him personally at Minneapolis in said District on the 23rd day of January, A. D. 1935.

BERNARD ANDERSON,
U. S. Marshal.
By T. J. Beatty, Deputy.

(Endorsed) Service admitted this 23rd of January, 1935.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plf.

Filed January 26, 1935.

MARGARET L. MULLANE,
Clerk,
By Thomas H. Howard,
Chief Deputy.

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51 (Order Granting Leave to Amend Petition.)

It appearing that there is no objection to the granting thereof,

It Is Hereby Ordered that the within motion be granted and that the petition be and the same hereby is amended as in said motion prayed.

By the Court

GUNNAR H. NORDBYE,
Judge.

Dated this 14 day of February, 1935.

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52 (Motion of Plaintiffs for Leave to Amend Petition.)

United States District Court, District of Minnesota,
Fourth Division.

C. T. Jaffray and R. H. M. Robinson, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. Law.
United States of America, Defendant.

Come now the plaintiffs and move the Court for an order amending the petition of the plaintiffs in the following respects:

(a) That the title of the above proceeding be amended so as to read as follows:

"C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,

vs.

United States of America, Defendant."

(b) That paragraph II of the petition be amended by inserting after the word "plaintiffs", being the first word in said paragraph, the names and word "Jaffray and Robinson".

(c) That paragraph II of the petition be amended by inserting after the first sentence thereof the following sentence: "Plaintiff Archer now is and at all times since September 29, 1934, has been, pursuant to an order of this Court that date made and entered under said Act, a duly appointed, qualified, and acting trustee of the estate of the company."

53 (d) That the first sentence of the second subparagraph of paragraph II of the petition be amended so as to read as follows: "Plaintiffs Jaffray and Archer are residents of Minneapolis, Minnesota, and St. Paul, Minnesota, respectively."

(e) That the third subparagraph of paragraph II of the petition be amended by inserting after the word "plaintiffs" the names and word "Jaffray and Robinson".

(f) That the first sentence of paragraph VIII of the petition be amended by inserting after the word "plaintiffs" the names and word "Jaffray and Robinson".

(g) That subparagraph (a) of paragraph XVI of the petition be amended by deleting the word "plaintiffs" and inserting in lieu thereof the words "the company".

(h) That the first clause of subparagraph (f) of paragraph XVI be amended so as to read "on or about March 1, 1922".

(i) That the prayer for relief of the petition be amended by striking therefrom the symbol and numbers "$7,758.58" and inserting in lieu thereof the following, "$8,276.92".

Dated this 13th day of February, 1935.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiffs,
1260 Northwestern Bank Building,
Minneapolis, Minnesota.

Cobb, Hoke, Benson, Krause & Faegre,
Of Counsel.

Defendant interposes no objections to the Court's making and entering an order granting the above motion.

GEORGE F. SULLIVAN,
United States Attorney.

LINUS J. HAMMOND,
Assistant United States Attorney.

(Endorsed): Filed February 14, 1935. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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54 (Order Sustaining Demurrer of Defendant to Complaint; Plaintiffs Granted Leave to File Amended Complaint, July 1, 1935.)

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray and R. H. M. Robinson, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. Law.
United States of America, Defendant.

The above matter came before this Court on a demurrer by the defendant to the complaint of the plaintiff on the grounds that (1) the Court has not jurisdiction of the subject of the action, and (2) that the facts stated therein are not sufficient to constitute a cause of action.

Mr. George F. Sullivan, United States Attorney, and Mr. Joseph E. Garvey, Attorney of the Department of Justice, appeared in behalf of the defendant in support of said demurrer; and

Mr. J. B. Faegre and Mr. Hayner N. Larson appeared as attorneys for the plaintiffs in opposition thereto.

55 It appears from the complaint that this is a proceeding for the recovery of internal revenue taxes erroneously and illegally assessed and collected. The proceeding against the United States is predicated on the fact that Willcuts, the Collector to whom the tax was paid, is not now in office, and that this is an action which could have been maintained against the Collector personally. In that the plaintiffs seek to recover more than $10,000, it is evident that unless this action could have been asserted against the Collector if he had been in office, this Court has no jurisdiction and the plaintiffs must be relegated to the Court of Claims for their relief.

Moses vs. United States, 61 Fed. (2d) 791 (C. C. A. 2) certiorari denied 289 U. S. 743.

The Minnesota and Ontaria Paper Company filed with the Collector of Internal Revenue claims for refunds of taxes paid for the years 1922 to 1925, inclusive. Later, the Commissioner of Internal Revenue issued certificates of over-assessment in which the overpayment of the 1922-25 taxes was recognized, and in the same certificate he directed attention to the application of the overassessment to a deficiency which the Commissioner contended was due the United States from the taxpayer for the years 1921, 1926, 1927 and 1928. The alleged deficiency arose by reason of a prior deduction taken by the taxpayer of some $790,000, which in a prior year the taxpayer was required to pay to the Government; the taxpayer contending that the payment was deductible as interest paid to the Government, while the Government denied
56 this right of deduction because it construed the $790,000 payment as a penalty rather than interest, and hence not deductible. The Government's determination of the character of the $790,000 payment made a gain for the years 1926 to 1928, instead of a loss as computed by the taxpayer, and in this manner the alleged deficiency arose, which was satisfied by the overassessment found by the Commissioner to exist for the years 1922 to 1925, inclusive. Another item of $7,758.58 entered into the situation. This sum was paid in the 1928 tax, and was apparently recognized as an item that should be returned to the taxpayer, and this sum, added to the overassessment found to exist for the years 1922 to 1925, inclusive, exactly equalled the deficiency as computed by the Commissioner. Notification of the Commissioner's action is evidenced by the letters, Exhibits "A" and "B", attached to the complaint dated August 31, 1933. This suit was commenced in 1934. Admittedly, if the alleged deficiency was due the Government, it was the duty of the Commissioner to apply the overpayment upon such deficiency.

The Court gathers that it sufficiently appears that the claim for refund for the years 1922 to 1925, inclusive, was duly filed by the taxpayer, and that if this Court has jurisdiction, the action was filed within the statutory period. It should be noted that plaintiffs' action is bottomed on the theory that the Commissioner, in applying the overpayment to the alleged deficiency, in effect rejected the application for the refund that was filed with the Collector of Inter-
57 nal Revenue, and that such action on the part of the Commissioner, according to the plaintiffs, is tantamount to a rejection so as to justify the bringing of an action in this Court for the recovery of this overpayment.

Section 3226 of the Revised Statutes as amended by Section 1103 (a) of the Revenue Act of 1932, c. 509, 47 Stat. 169, provides:

"No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates."

The sum that is now sued for is the same fund that the taxpayer requested the Collector to refund. It was paid to the Collector. The Government, through the Commissioner, refused a return to the taxpayer and applied the overpayment as hereinbefore stated. The taxpayer contends that the application was erroneous and unlawful.

This action to be sustained as against the Collector if he is in office, must be founded upon the erroneous collection by him of the 1922-25 taxes. It cannot be bottomed on
58 an account stated or implied contract as announced in Bonwit Teller & Co. vs. United States, 283 U. S. 258. Willcuts, the Collector to whom the tax was paid, had absolutely nothing to do with the issuance of the overassessment certificate. He was not a privy to that agreement, nor had he either expressly or impliedly admitted the overpayment of the taxes in question. The Collector's connection with the Commissioner's action was purely ministerial and administrative, and in that the taxpayer seeks to recover a sum in excess of $10,000, an account stated or implied contract as a basis of recovery can only be directed against the Government in the Court of Claims. This Court has no jurisdiction of such an action. The complaint would be demurrable by Willcuts, and hence is demurrable by the Government. First National Bank vs. United States, 2 F. Supp. 109; Untermeyer vs. Bowers, 7 F. Supp. 347; Moses vs. United States, supra;

Harvey Co. vs. Malley, 60 Fed. (2d) 97. In other words, it is evident that, as against the Collector, plaintiffs cannot rest their cause of action by simply proving the issuance and acceptance of the certificate of overassessment issued by the Commissioner. If the action is to be maintained against the Collector, plaintiffs will be required to allege and prove that the 1922-1925 taxes in the amount claimed were illegally collected. A reading of the bill of complaint indicates that plaintiffs have erroneously assumed that they could proceed against the Collector on the admission of the Commissioner.

59 There are no grounds alleged in the bill of complaint to substantiate any action as against the Collector. Mere statements or conclusions will not suffice. Moses vs. United States, supra; Untermeyer vs. United States, supra. In the latter case, Judge Patterson in considering a complaint that was legally comparable to the present one, stated:

"The plaintiffs' one chance to hold the collector liable would be on the theory of a wrongful collection by the latter when the plaintiff was obliged to make payment in June, 1924. If the payment then made was an overpayment of his 1919 tax liability to the extent of $29,497.30, a suit against the collector to recover this amount is appropriate. But the complaint does not set forth any such cause of action. It is not alleged either in generality or in detail that the 1924 payment was an overpayment. The complaint does not state that the plaintiffs' true income in 1919 was so much, that the proper tax thereon was so much, but that the collector compelled him to pay an excessive amount. The statement that the Commissioner conceded that there had been an overpayment of $29,497.30 will not do. That is merely the pleading of evidence, and the defendant may nevertheless insist that despite the Commissioner's concession there was actually no overpayment. As the pleadings now stand, there is no issue squarely raised as to whether the payment made in 1924 was an overpayment by the plaintiff."

There is no provision in the Revenue Act that suggests that the issuance by the Commissioner of a certificate of overassessment, coupled with an application of the overassessment to a deficiency, deprives the taxpayer of the right to proceed against the Collector who collected the overpayment. The taxpayer may presumably waive the rights that may accrue by reason of the issuance of a certificate of overassessment in absence of any adoption by the taxpayer which would result in an account settled. A commissioner may

60 issue a certificate of overassessment and make no refund nor attempt to apply the assessment on any de-

ficiency alleged to be due the Government. Under such circumstances, the Commissioner having filed his decision on the claim, and not having refunded the payment, the taxpayer could proceed against the Collector and establish by proof his right to recover the overpayment, or he could proceed in the Court of Claims on the account stated or implied promise to pay. It is urged by the defendant in support of its demurrer that the Commissioner allowed the claim by the issuance of the overassessment certificate, and hence this action would not lie because the Government has not rejected the claim for refund. It should be noted, however, that the Act does not state that as a condition precedent to the bringing of an action against the Collector, the Commissioner must have formally disallowed the claim. Before suit may be brought, it provides (26 USCA § 156):

"* * * No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision therein within that time."

If no decision was made by the Commissioner in the six months' period, then suit could be commenced at any time, and the statute of limitations would not commence until two years after the disallowance of the claim. Strictly speaking, therefore, the characterization of the act of the Commissioner in issuing the certificate of overassessment as an allowance or rejection of the claim is not controlling in this proceed-
61 ing against the Collector, in that it is not contended that the two year period has expired. It is interesting to note that in Moses vs. United States, supra, the Government was sustained in its contention that the issuance of a certificate of overassessment by the Commissioner and the application of the overassessment to an alleged deficiency was tantamount to a rejection in so far that it required an action brought against the Collector to be instituted within two years after the issuance of such certificate. The same conclusion was reached in Pratt & Whitney Co. vs. United States, (Ct. Cl.), 6 F. Supp. 574, the court stating (page 576):

"He (the Commissioner) found and determined that the taxes for 1918 had been overpaid, or, as stated in the language of the Bureau, there had been an 'overassessment' thereof. Having also determined a deficiency in the 1917 taxes, he applied part of the overpayment thereon and refunded the balance. All this was shown by the certificate of overassessment in the manner above stated. When the Commissioner computed the amount of refund to be made the plaintiff and paid it, he allowed the claim for refund to that

extent. When, instead of refunding the remainder of the overpayment to plaintiff, he credited it upon the taxes of other years, he rejected the claim for refund to the extent of these credits. * * * If, after the filing of this claim, the Commissioner had announced that he had considered the matter and determined that there was no overpayment, we do not think any one would claim that suit could not then be begun. In the case at bar, after consideration and having found that there was an overpayment, he announced that part of this overpayment would be credited on taxes for other years. This was in effect a disallowance of the part of the claim to which the suit relates and the provisions of section 3226 became applicable. * * * The Commissioner did not merely allow the overassessment; he determined it, and by the same determination announced that a part of it would not be refunded."

62 In the supplemental opinion of the Court of Claims in the above case, 353 C. C. H. par. 9222, it is stated:

"Plaintiff has filed a motion for new trial in which amendments to the findings are requested and the matter of the recovery of the portion of the overassessment for 1918 which was applied upon a deficiency for 1917 is reargued at great length. In the original opinion the court held that plaintiff's claim for refund of the taxes of 1918 was rejected and it is assumed in argument that the basis of this holding was the validity of the credit. This is an error. The question of whether the claim was rejected does not in any way depend upon the determination of whether the credit was valid and effective. The act of the Commissioner in making the credit, whether valid or invalid, was one of the matters that showed that the claim was rejected. The facts are that the Commissioner had mailed to plaintiff a full itemized statement of its liability for taxes for the years in controversy, as he determined it, in the form of a so-called 'certificate of overassessment' which showed a credit upon the taxes of 1917 of the principal sum for which plaintiff now brings suit and also showed the balance due plaintiff which was refunded and accepted. Regardless of how we construe the statute of 1928 which declares credits upon barred taxes to be 'void,' the plaintiff must have understood from the statement of the account and the acts of the Commissioner in relation thereto that the Commissioner refused to pay anything more upon its claim for refund than the amount specified as refundable in the statement of the account with interest thereon and that the remainder of plaintiff's claim for refund was rejected. When the Commissioner informed plaintiff that

the part of the overpayment for which suit is now being brought was credited upon taxes of another year, he could not have made any statement that would more definitely inform plaintiff that the claim for refund thereof had been rejected, and when it was rejected the statute of limitations began to run."

The Government further contends and earnestly suggests that even though the complaint herein could be amended so as to set forth a good cause of action as against the Collector on the theory of a tax illegally collected, nevertheless, the Court would not have jurisdiction because by the issuance of the certificate of assessment and the application upon
63 the deficiency alleged to exist in prior years, the taxpayer must proceed in the Court of Claims. It is urged that permitting the taxpayer to proceed against a Collector under the circumstances herein may permit the taxpayer in effect to recover the overpayment credit which has been applied to the alleged deficiency and which constituted a payment of such deficiency without complying with the requirement of filing a claim for refund for the overpayment caused by the application of such credit. That same situation would be true if the taxpayer proceeded in the Court of Claims on the account stated. The Government has determined that a deficiency exists, and presumably it has duly investigated the entire tax situation during such years and the entire matter can be litigated and determined in either the Court of Claims on an account stated or implied promise, or on an action against the Collector, treating the action of the Commissioner as a rejection. If the Government's contention is to be sustained, then, under the circumstances herein, the taxpayer would be required to file a claim for refund for the overpayment of taxes for the years 1921, 1926, 1927 and 1928 by reason of the credit, and await the action of the Commissioner before any suit was brought. Then, if the refund was denied for these years, the taxpayer would be required to proceed in the Court of Claims because the overpayment of the 1921, 1926, 1927 and 1928 taxes was caused by the act of the Commissioner in applying the credit, and the Collector was not a party to such procedure. The Court can find no provision or implication in the Act
64 which requires or recognizes such procedure, and which sanctions the view that a credit applied as herein creates a payment which, if in excess of the amount legally due for such years, requires a claim filed for refund as a condition precedent to the determination of the correct-

ness of the Commissioner's action. See Rosenstadt and Waller vs. United States, 7 F. Supp. 287; Parks and Woolson Machine Co. vs. United States, 58 Fed. (2d) 868. Assume, for instance, that no certificate of overassessment had been issued, but when the six months' period had expired, the taxpayer brought this action against the Collector for overpayment of the taxes. If the Government answered and admitted the overpayment, but averred that it had been applied on a tax deficiency accruing in prior years, would it be contended that the taxpayer would be required to drop the pending suit and file a claim for refund for the year's taxes to which the overpayment had been applied in the event he desired to contest the validity of such claimed deficiency? Under such circumstances, if defendant's position be sound, the Government could require the taxpayer to run around in a circle and the refund of taxes would be an endless procedure. In Moses vs. United States, supra, the Court recognized the propriety of maintaining an action against a Collector under circumstances comparable to the facts herein. There, as here, the complaint not only set forth the certificates of overassessment issued by the Commissioner, but alleged in some detail the illegality and error of the Commissioner's action in finding the existence of the deficiency in the prior years to which the overassessment was applied. The Court
65 treated such allegations as mere surplusage, and under a liberal construction of the complaint concluded that, if the plaintiff had sufficiently alleged a cause of action against the Collector by reason of erroneously collecting the tax which the Commissioner sought to apply to the alleged deficiency, then the complaint should be sustained. It would seem, therefore, that plaintiffs herein could proceed by alleging the filing of the claim for refund, pleading the facts showing that the revenue tax was erroneously collected by the Collector, that the Collector was now out of office, that more than six months had expired since the filing of the claim, and that no refund had been made to the taxpayer. Such an action would be sustainable under the Tucker Act. It may be that the more expeditious procedure would be for the taxpayer to proceed in the Court of Claims, and that there would be fewer complications if the taxpayer under the circumstances herein lodged its complaint in that tribunal, but the Court is not prepared to say that this Court is without jurisdiction. Whichever court is used, the action of the Commissioner in applying the overpayment to the alleged deficiency of the prior years will presumably be for determination, and, if valid, then there can be no recovery by the taxpayer.

Therefore, summarizing the Court's views herein, it may be stated that it is the Court's opinion that this Court has jurisdiction to proceed under the Tucker Act in an action brought by the taxpayer to recover for the alleged overpayment of the taxes for the years 1922 to 1925, but such
66 action, however, cannot be predicated on any certificate of overassessment issued by the Commissioner of Internal Revenue, but must be based upon facts which establish the illegality of the tax collected by the Collector. The instant complaint, however, is demurrable in that it is predicated and bottomed on an entirely wrong theory and states no cause of action against the Collector if he had been in office. The demurrer, therefore, must be sustained and the bill dismissed, but in view of the fact that the plaintiffs may desire to amend their complaint in harmony with the views expressed herein, the Court will allow twenty days after the filing of this order within which the plaintiffs may file their amended complaint.

It is so ordered.

Dated this 1st day of July, 1935.

GUNNAR H. NORDBYE,
United States District Judge.

(Endorsed): Filed July 1st, 1935. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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67 (Petition of Plaintiffs for Rehearing of Order sustaining Demurrer to Complaint.)

Come now plaintiffs and respectfully pray the Court for an order granting a rehearing upon the demurrer interposed by defendant to plaintiffs' complaint, which demurrer was sustained by order of the Court dated and filed July 1, 1935.

In support of this petition for rehearing, plaintiffs respectfully represent to the Court the following facts:

This proceeding is brought for the recovery of internal revenue taxes for the years 1922 to 1925, inclusive, and for the year 1928, alleged to have been illegally collected by one Levi M. Willcuts as Collector of Internal Revenue for the District of Minnesota; since the amount of the recovery sought is in excess of $10,000, the complaint alleges (paragraph I) that Willcuts was not in office when the suit was begun.

It is alleged in the complaint that the following amounts of taxes were paid for each of the years 1922 to 1925, inclusive:

Year	Amount	Allegation
1922	$ 66,818.77	Paragraph IV
1923	166,352.88	Paragraph V
1924	70,926.94	Paragraph VI
1925	9,365.77	Paragraph VII

68 It is alleged further that the following claims for refund were filed for each of said years:

Year	Amount Claimed	Allegation
1922	$66,818.77	Paragraph IV
1923	86,355.86	Paragraph V
1924	49,670.56	Paragraph VI
1925	3,400.75	Paragraph VII

The complaint further alleges (paragraphs VIII, IX, X, XI, and XII) that subsequent to the filing of the claims for refund the Commissioner of Internal Revenue issued a certificate of overassessment for each of the years 1922 to 1925, inclusive, showing the following overpayments of taxes:

Year	Amount Overpaid	Allegation
1922	$49,318.77	Paragraph IX
1923	29,427.69	Paragraph X
1924	23,904.23	Paragraph XI
1925	7,800.00	Paragraph XII

The certificates of overassessment stated that the overpayments indicated therein together with interest on the amounts of said overpayments would be credited against deficiencies for taxes claimed for other years, including deficiencies claimed for the years 1921, 1926, 1927, and 1928. The paragraphs of the complaint referred to allege also that, except as noted in said paragraphs, credits were in fact made on or about July 13, 1933, as indicated in said certificates of overassessment.

The complaint, in paragraph XIII, also refers to a settlement agreement entered into by the taxpaying companies and the Commissioner of Internal Revenue; the agreement is attached to the complaint as Exhibit G, was signed by the Commissioner of Internal Revenue July 7, 1933, and was approved by the Secretary of the Treasury on the same date. This agreement, as recited in the beginning thereof, was made

under and in pursuance of Section 606 of the Revenue
69 Act of 1928, determined the amount of tax legally owing for each of the years 1922 to 1925, inclusive, among others, and provided that the parties mutually agreed that the principal amount of the liability so determined should be final and conclusive upon approval of the agreement by the Secretary of the Treasury. As respects the years 1922 to 1925, inclusive, the amounts sought to be recovered in this suit do not exceed the difference between the amounts shown by said agreement as owing for said years and the amounts alleged as having been paid for said years.

The complaint also alleges facts whereon is based plaintiffs' contention that the credits made by the Commissioner of Internal Revenue were illegal as applied to the deficiencies claimed for the years 1921, 1926, 1927, and 1928. It alleges further (paragraph XV) that a claim for refund in the amount of $7,758.58 was filed for the year 1928. The claim for refund is attached to the complaint as Exhibit L.

In its order sustaining defendant's demurrer, the Court concluded that the complaint failed to state a cause of action for recovery of taxes for the years 1922 to 1925, inclusive, for the reason that no facts are alleged showing wherein such taxes were illegal. The order states:

*** it is evident that, as against the Collector, plaintiffs cannot rest their cause of action by simply proving the issuance and acceptance of the certificate of overassessment issued by the Commissioner. If the action is to be maintained against the Collector, plaintiffs will be required to allege and prove that the 1922-1925 taxes in the amount claimed were illegally collected. A reading of the bill of complaint indicates that plaintiffs have erroneously assumed that they could proceed against the Collector on the admission of the Commissioner. There are no grounds alleged in the bill of complaint to substantiate any action as against the Collector. Mere statements or conclusions will not suffice. ***

The order further states (p. 13) that plaintiffs' action

*** cannot be predicated on any certificate of overassessment issued by the Commissioner of Internal Revenue, but must be based upon facts which establish the illegality of the tax collected by the Collector. ***

70 In its order sustaining the demurrer, the Court makes no reference to the settlement agreement, Exhibit "G", approved by the Secretary of the Treasury on July 7, 1933. This is undoubtedly due to the inadvertent failure of counsel

for plaintiffs to draw the court's attention to the existence of the agreement and to the provisions of Section 606 of the Revenue Act of 1928 authorizing its execution. Section 606 provides as follows:

(a) The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner), is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

It is evident, we respectfully submit, that by the terms of Section 606 the determination of the amount of taxes legally owing made by the agreement of July 7, 1933, in the absence of fraud or the misstatement of a material fact, is binding and conclusive upon the taxpayer and the Government, including all officers or agents of the Government, of whom the Collector is one, that by the execution of the agreement of July 7, 1933, the fact of overpayment of taxes for 1922 to 1925 is conclusively established, and that neither the plaintiffs nor the defendant (nor the Collector, were he the defendant in the action) is by law permitted to controvert that fact.

71 It follows that the illegality of the collection of the taxes for 1922 to 1925, inclusive, sought to be recovered is sufficiently alleged and that a setting out in the complaint of the facts resulting in such illegality would probably be subject to be stricken as surplusage. See Aetna Life Ins. Co. vs. Eaton (C.C.A. 2d), 43 F. (2d) 711, certiorari denied, 282 U. S. 887; Hering vs. Tait (C. C. A. 4th), 65 F. (2d) 703.

Respectfully submitted,

J. B. FAEGRE,
HAYNER N. LARSON.

State of Minnesota,
County of Hennepin—ss.:

Hayner N. Larson, being sworn, says that he is one of the attorneys for the plaintiffs named herein; that he has read the foregoing petition and knows the contents thereof; and that the same is true.

HAYNER N. LARSON.

Subscribed and sworn to before me this 5th day of July, 1935.

CAROL NESS,
Notary Public, Hennepin County, Minn.

My Commission Expires April 22, 1940.

(Notarial Seal)

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72 (Order granting Petition for Rehearing and setting same for Argument.)

Upon the foregoing verified petition

It Is Hereby Ordered that said petition for rehearing be and the same hereby is set down for argument before the Court in chambers at 10:00 o'clock A. M. on the 16th day of July, 1935, in the Federal Building, Minneapolis, Minnesota.

It Is Hereby Further Ordered that a copy of this order together with said verified petition be served upon the United States District Attorney, attorney for the defendant, not later than two days from the date hereof.

By The Court

GUNNAR H. NORDBYE.

Dated this 5 day of July, 1935.

Due and personal service of the within Petition for Rehearing and Order Granting Rehearing is hereby admitted this 6th day of July, 1935.

GEORGE F. SULLIVAN,
United States District Attorney.

(Endorsed): Filed July 12, 1935, Margaret L. Mullane, Clerk, By Thomas H. Howard, Chief Deputy.

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73 Order Modifying Order of July 1, 1935, and Overruling Demurrer.

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray and R. H. M. Robinson, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, debtor, Plaintiffs

No. 3391. vs. Law.

United States of America, Defendant.

This matter came before the Court on the petition of the plaintiffs for a rehearing; the Court having heretofore filed its order on July 1, 1935, sustaining defendant's demurrer to the complaint, with leave granted, however, to the plaintiffs to amend.

At the argument on the petition for rehearing, it was called to the Court's attention that the complaint in Paragraph Thirteen refers to, and makes a part thereof, a settlement agreement, Exhibit "G", which was signed by the Commissioner of Internal Revenue on July 7, 1933, and was approved by the Secretary of the Treasury on the same date. This closing agreement was made in pursuance of Section 606, Revenue Act of 1928, to determine the amount of tax
74 legally owing for each of the years 1922-25, inclusive. The amount of the taxes sought to be recovered herein for said years reflects the difference between the amount actually paid by the taxpayer and the true amount found to be due by the terms of the closing agreement.

Plaintiffs take the position that, in that the closing agreement is binding on the plaintiffs and the Government in absence of fraud or misstatement of a material fact, the amount of overpayment for the years in question has been conclusively established, and is therefore binding upon the Collector of Internal Revenue who exacted the overpayment from the taxpayer in the first instance. Plaintiffs further urge that to require the taxpayer to set forth in the complaint the basic facts and circumstances giving rise to the overpayment would be mere surplusage and immaterial in light of the closing agreement, and further, that it would be an idle and unnecessary ceremony to require the taxpayer to plead and prove anything more than the closing agreement in order to prove the overpayment for the years in question. After reflection, the Court is of the opinion that the original order filed on July 1, 1935, failed to give weight to the closing agreement and to the reliance of the plaintiffs thereunder. When the matter was originally presented, the Court gathered

from the arguments of counsel, and from the briefs submitted, that the plaintiffs were seeking to establish their cause of action by reason of the issuance of the certificates of over-
assessment by the Commissioner and assumed that
75 plaintiffs were endeavoring to establish an account
stated or implied promise on the part of the Government by reason of such documents. However, the closing agreement is in no way identified with the certificates of overassessment, except that such agreement may have formed the basis for the issuance of such certificates, and it must be recognized that plaintiffs have certain rights under the statute by reason of such closing agreement that are clearly distinguishable from any rights that may arise by reason of the so-called account stated. The Court has been cited to no authority which intimates that such closing agreement is not provable in a suit against the Collector, and no cogent reason is suggested to the contrary. Section 606 was passed to facilitate the adjustment of tax claims. The taxes in question were paid to the Collector. He is chargeable with the erroneous collection of any excess moneys that were paid to him in his capacity as Collector. Now that the Government, by its solemn agreement entered into pursuant to statute, has acknowledged that its Collector exacted more money than was due for the years 1922-25, inclusive, it must be apparent that the Collector is not in a position to contradict the terms of the closing agreement. Presumably, such an agreement is binding upon him and takes the place of the proof that is ordinarily required by the taxpayer in making out a case against the Collector for an overpayment. It is conceded
that the Government failed to return these taxes, and
76 the Court has already found that the failure of the
Government is tantamount to a rejection of plaintiffs' claim. In proceeding against the Collector, the plaintiffs will have made out a prima facie case in proving the claim for refund that was filed, the facts indicating a refusal on the part of the Government to refund the taxes, and the agreement between the Government and the taxpayer as to the admitted overpayment. The proof by the Government to the effect that the overpayment was applied to a deficiency that existed in prior years will undoubtedly require the plaintiffs to go ahead with proof and sustain the burden that the Government erred in so applying the overpayment.

The Court having sustained the demurrer solely on the grounds of insufficient facts being pleaded to establish an erroneous and illegal collection of the 1922-25 taxes by the Collector, and in view of the views herein expressed as to the materiality and conclusiveness of the closing agreement in

absence of fraud and misrepresentation, it therefore follows that the bill of complaint, in the Court's opinion, states a cause of action, and that the Court has jurisdiction of the subject of the action. Therefore, the order filed July 1, 1935, sustaining the demurrer is amended and supplemented by the views hereinbefore set forth, and the order sustaining the demurrer and dismissal of the bill be and the same hereby is stricken, and in lieu thereof,

It Is Ordered that the demurrer to the bill be and the same hereby is overruled and defendant have twenty days
77 after the filing of this order within which to file its answer herein.

Dated this 30th day of July, 1935.

GUNNAR H. NORDBYE,
United States District Judge.

(Endorsed): Filed July 30, 1935, Margaret L. Mullane, Clerk, By Thomas H. Howard, Chief Deputy.

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78 Answer.

Now comes the defendant United States of America and for its answer to the petition of the plaintiffs herein alleges and states:

I.

Defendant admits that Levi M. Willcuts was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Minnesota from the first day of June, 1921, to the 31st day of July, 1933, inclusive. That since the last mentioned date he has not been and is not now in office as Collector of Internal Revenue. Except as so admitted, defendant denies each and every allegation in Paragraph I of the petition.

II.

Defendant admits the allegations contained in Paragraphs II to XIII inclusive of the petition.

III.

Defendant admits the allegations contained in Subdivision (a) of Paragraph XIV.

Defendant admits that while said proceedings were pending before the Board, the company and its affiliates held conferences with the Commissioner and other representatives of the Treasury Department for the purpose of ascertaining

and agreeing upon the amount of tax owing for each
79 of the said years 1917 to 1920 inclusive and that as the result of said conferences a written stipulation, dated February 25, 1926, was entered into and the first paragraph of said stipulation was as is set forth in said Subdivision (b) of Paragraph XIV of the petition herein and that the last paragraph of said stipulation was as set forth in said Subdivision (b) of Paragraph XIV of the petition herein. Except as herein admitted, defendant denies each and every other matter set forth in Subdivision (b) of Paragraph XIV of the petition herein.

Defendant admits the allegations contained in Subdivision (c) of Paragraph XIV of the petition.

Defendant admits that on March 6, 1926, a stipulation was filed with the Board as set out in Subdivision (f) of Paragraph XIV and that on the same day the Board entered three orders determining the amount owing for each year involved. The amount owing for 1917 was covered in one order; the amount owing for 1918 was covered in another order; and the amount owing for each of the years 1919 and 1920 was covered in the third order. That the order relating to 1917 was as set out in said Subdivision (f) of Paragraph XIV. Defendant further admits that pursuant to the said orders of the Board, the Commissioner caused the Collector to make, and on March 12, 1926, the Collector did make, demand upon the company for payment of the amount of tax liability so assessed for the years 1917 to 1920 inclusive, and on March 22, 1926, in compliance with said demand, the company paid to the Collector $3,044,807.39.

Defendant admits the allegations contained in Subdivision (h) of Paragraph XIV of the petition herein, except that it is specifically denied that the company sustained a consolidated net loss for the year 1926.

Defendant admits the allegations contained in Subdivision (i) of Paragraph XIV of the petition herein, except that it is specifically denied that the company sustained a consolidated net loss for the year 1927.

80 Defendant admits the allegations contained in Subdivision (j) of Paragraph XIV of the petition herein, except that the defendant specifically denies that the company sustained a consolidated net loss for the year 1928.

Except as herein admitted, qualified, or alleged defendant denies each and every matter and thing in Paragraph XIV of the petition contained and each and every part thereof.

IV.

Defendant admits that on April 23, 1930, pursuant to a demand of the Collector the company paid to him $7,758.58, together with interest thereon of $518.34, as taxes claimed by the Commissioner of Internal Revenue to be owing by the company for 1928. Except as so admitted, defendant denies the allegations contained in Subdivision (a) of Paragraph XV of the petition.

Defendant admits the allegations contained in Subdivision (b) of Paragraph XV of the petition.

V.

Defendant admits the allegations contained in Subdivision (a) of Paragraph XVI of the petition.

Defendant admits that during all such time as alleged in Subdivision (b) of Paragraph XVI that the Fort Frances company has been engaged in the manufacture of newsprint at Fort Frances, Ontario, and for that purpose has used a plant leased from the Ontario and Minnesota Power Company, Limited. Except as so admitted, defendant denies the allegations of Subdivision (b) of Paragraph XVI of the petition.

Defendant denies the allegations contained in Subdivision (c) of Paragraph XVI of the petition.

81 Defendant admits the allegation contained in Subdivision (d) of Paragraph XVI that the books of both the company and Fort Frances at all times mentioned have been kept on the accrual basis and returns of income have been made on that basis. Defendant further admits that the amounts set up on the company's books for interest accrued on unpaid balances owing for newsprint purchased by the plaintiff from Fort Frances for the year 1921 was $164,525.98. Except as so admitted, defendant denies the allegations contained in Subdivision (d) of Paragraph XVI.

Defendant admits the allegations contained in Subdivision (f) of Paragraph XVI of the petition.

As to Subdivision (g) of Paragraph XVI, defendant admits that on or about July 7, 1933, by reason of said interest item of $164,525.98, the Commissioner of Internal Revenue of the United States assessed against plaintiffs as receivers of the company a withholding tax thereon of $16,452.60 together with a penalty of $4,113.15, a total of $20,565.75. Thereafter and on or about July 15, 1933, said total amounts so claimed as owing, together with interest thereon of $10,-

556.14, except as to $311.43 thereof, was collected and satisfied by application thereto as credits of the 1922 interest item of $24,034.76, of the 1923 interest item $1,255.69, of the 1924 interest item $3,038.92, and of the 1925 interest item of $2,501.09.

Except as herein admitted, qualified and alleged, defendant specifically denies each and every matter and thing in Paragraph XVI of the petition and each and every part thereof.

VI.

As and for a further and affirmative defense, the defendant alleges that the purported causes of action, set out in plaintiff's petition for the recovery of the taxes collected for the years 1922 to 1925 inclusive, are barred by the statute of limitations properly applicable thereto, for the reason that the taxes for said years were paid on the dates and in the amounts as alleged in plaintiff's petition, and that
82 accordingly this action was commenced more than five years after the payment of said taxes and was therefore commenced after suit for the collection of said taxes was barred by the statute of limitations properly applicable thereto.

VII.

As and for a further and second affirmative defense, the defendant alleges: That and as will appear from the allegations of the plaintiff's petition, the amounts sought to be recovered in this action as claimed overpayments of tax for the respective years 1922 to 1925 inclusive were, by the Commissioner of Internal Revenue, by and through certificates of overassessment issued by him for those years, determined to be overpayments for the said years 1922 to 1925 inclusive, and the amounts so determined to be overpayments for the said years were by the said Commissioner, pursuant to the statute in such case made and provided, credited on deficiency assessments made and entered by the said Commissioner against the taxpayer for the respective years 1926 to 1928 inclusive, and the year 1921, which last mentioned assessments were then and there not barred of collection, but were then and there outstanding and unpaid and collectible by distraint; that accordingly any claims that plaintiff may have had on account of overpayments of taxes for the said respective years 1922 to 1925 inclusive were, prior to the commencement of this action, fully paid and satisfied by the said act of the Commissioner in crediting such overpayments to the said subsisting deficiency assessments against the taxpayer for the said respective years 1926 to 1928 inclusive, and the said year 1921.

VIII.

Except as herein admitted, qualified and alleged, defendant denies each and every matter and thing in said petition contained and each and every part thereof. Defendant specifically denies that it is indebted to the plaintiff in the sums alleged in the complaint or in any amount.

Wherefore, Defendant prays that the petition of the
83 plaintiff be in all respects dismissed and that defendant have judgment for its costs and disbursements herein.

Dated: August 16, 1935.

GEORGE F. SULLIVAN,
United States Attorney.

LINUS J. HAMMOND,
Asst. United States Attorney.

Attorneys for Defendant
221 Federal Courts Building
Saint Paul, Minnesota.

84 State of Minnesota,
County of Ramsey—ss.

Linus J. Hammond, being first duly sworn according to law, says that he is an Assistant United States Attorney for the District of Minnesota and that he has read the foregoing Answer and that the allegations contained therein are true as he verily believes.

LINUS J. HAMMOND.

Subscribed and sworn to before me this 16th day of August, 1935.

ADELE L. GUERIN,
(Notarial Seal) Notary Public, Ramsey County, Minn.

My commission expires Oct. 26, 1938.

Service of the within Answer is admitted this 17th day of August, 1935.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiff.

(Endorsed): Filed August 19, 1935. Margaret L. Mullane, Clerk, By Thomas H. Howard, Chief Deputy.

85 Reply.

Come now the plaintiffs and for their reply to defendant's answer deny each and every allegation in said answer contained.

Wherefore plaintiffs pray that judgment be granted as in their petition asked.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiffs,
1260 Northwestern Bank Building,
Minneapolis, Minnesota.

Cobb, Hoke, Benson, Krause & Faegre,
Of Counsel.

86 State of Minnesota,
County of Hennepin—ss.

C. T. Jaffray, being sworn, says that he is one of the plaintiffs in the above-entitled action; that he has read the foregoing reply and knows the contents thereof; that the same is true.

C. T. JAFFRAY.

Subscribed and sworn to before me this 19th day of August, 1935.

C. O. HOLMER,
(Notarial Seal) Notary Public, Hennepin County, Minn.

My Commission expires April 15, 1941.

Service of the within Reply is admitted this 21st day of August, 1935.

GEORGE F. SULLIVAN,
Attorney for Defendant.

(Endorsed): Filed August 23, 1935. Margaret L. Mullane, Clerk, By Thomas H. Howard, Chief Deputy.

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87 (Order Amending Petition.)

In the District Court of the United States in and for the District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer as Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. At Law.
United States of America, Defendant.

Upon motion therefor duly made,

It Is Ordered that the last sentence of paragraph b of Section XVI of plaintiffs' petition be and the same hereby is amended so as to read as follows:

At no time has the Fort Frances Company maintained any sales representative in the United States, but during all the time herein mentioned it has maintained and still does maintain an office in the United States.

GUNNAR H. NORDBYE,
Judge of the District Court.

Dated May 4, 1936.

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88 (Motion of Plaintiffs for Leave to Amend Petition.)

Come now the plaintiffs and move the Court for an order permitting the amendment of and amending the last sentence of paragraph b of Section XVI of their petition so as to read as follows:

At no time has the Fort Frances Company maintained any sales representative in the United States, but during all the time herein mentioned it has maintained and still does maintain an office in the United States.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiffs.

Dated May 4, 1936.

(Endorsed): Filed May 4, 1936. Margaret L. Mullane, Clerk. By Frances C. Baxter, Deputy.

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89 (Findings of Fact and Conclusions of Law of District Court.)

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. Law.
United States of America, Defendant.

The above-entitled matter having been placed upon the general term calendar came on for hearing before the undersigned, one of the Judges of the above-named Court, without a jury, a jury having been specifically waived.

Mr. J. B. Faegre and Mr. Hayner N. Larson, with Messrs. Cobb, Hoke, Benson, Krause and Faegre of counsel, appeared as attorneys for the plaintiffs; and

Mr. George F. Sullivan, United States Attorney, Mr. Linus J. Hammond, Assistant United States Attorney, Mr. Robert H. Jackson, Assistant Attorney General, and Mr. Andrew D. Sharpe and Mr. John E. Garvey, Special Assistants to the Attorney General, appeared for the United States.

The Court having heard the arguments of counsel, and upon the evidence introduced and consideration of
90 the briefs and all the files and records herein, makes the following

Findings of Fact.

I.

Minnesota and Ontario Paper Company is a corporation organized and existing under the laws of the State of Maine. It is hereinafter referred to as the Paper Company. Fort Frances Pulp and Paper Company, Limited, is a corporation organized and existing under the laws of the Province of Ontario, Canada. It is hereinafter referred to as the Fort Frances Company. Ontario and Minnesota Power Company, Limited, is a corporation organized and existing under the laws of the Province of Ontario, Canada. It is hereinafter referred to as the Power Company.

II.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer now are, and at all times since September 29, 1934, have been, pursuant to an order of this Court that day made and entered under Section 77B of the Bankruptcy Act, the duly appointed, qualified, and acting trustees of the estate of the Paper Company, debtor. Between July 11, 1934, and said September 29, 1934, C. T. Jaffray and R. H. M. Robinson, pursuant to an order of this Court made and entered under said Act on July 11, 1934, were the duly appointed, qualified, and acting temporary trustees of the estate of the Paper Company, debtor. From November 30, 1931, until their appointment as such temporary trustees on July 11, 1934, Jaffray and Robinson were the duly appointed,
91 qualified, and acting receivers of the Paper Company.

III.

From 1917 to 1920, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with the following corporations: International Lumber Company, Rainy River Improvement Company, Minnesota, Dakota and Western Railway Company, Falls Lumber and Coal Company, Watrous Island Boom Company, and International Insulation Company. From 1921 to 1925, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with all said named corporations except International Insulation Company. From 1926 to 1928, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with all said named corporations, together with Minnesota Forest Products Company, a corporation. The corporations affiliated with the Paper Company are sometimes herein referred to as "affiliates".

During each of said three periods, the annual earnings or net income of the Paper Company and its affiliates were consolidated for income-tax purposes. All taxes paid on such consolidated earnings or net income have been paid by the Paper Company.

IV.

All income taxes paid by the Paper Company to the United States for the years 1922 to 1925, inclusive,
92 were paid to one Levi M. Willcuts as the duly appointed, qualified, and acting Collector of Internal Revenue for the District of Minnesota. Willcuts was such Collector from June 1, 1921, to July 31, 1933, inclusive. Since the latter date he has not been and is not now in office as Collector of Internal Revenue. Whenever herein the word "Collector" is used, reference is made to said Willcuts as Collector of Internal Revenue for the District of Minnesota.

V.

On March 14, 1923, the Paper Company filed with the Collector a tentative return of consolidated net income of itself and affiliates for 1922 and at the time of such filing paid to the Collector $17,500 in part payment of the estimated tax. On June 15, 1923, the Paper Company filed with the Collector a completed return of the 1922 consolidated net income of itself and affiliates. Said completed return showed a tax of $66,818.77, which amount, except for the payment of $17,500 already made, was paid to the Collector as follows:

June 15, 1923	$15,909.39
September 15, 1923	16,704.70
December 15, 1923	16,704.68

On June 4, 1927, the Paper Company filed with the Collector a claim for refund of the $66,818.77 paid to him as income tax for 1922. On April 30, 1929, a further claim for refund of said tax was filed with the Collector.

VI.

On March 15, 1924, the Paper Company filed with the
93 Collector a tentative return of consolidated net income of itself and affiliates for 1923 and at the time of such filing paid to the Collector $58,000 in part payment of the estimated tax. On June 14, 1924, the Paper Company filed with the Collector a completed return of the 1923 consolidated net income of itself and affiliates. Said completed return showed a tax of $166,352.88, which amount, except for the payment of $58,000 already made, was paid to the Collector as follows:

June 14, 1924	$25,175.44
September 14, 1924	41,588.22
December 14, 1924	41,588.22

On July 20, 1927, the Paper Company filed with the Collector a claim for refund of $110,241.81 of the income taxes paid to him for 1923. On or about December 10, 1928, a further claim for refund was filed with the Collector wherein the amount of the 1923 income taxes claimed as refundable was reduced to $86,355.86. On April 30, 1929, a second further claim for refund was filed with the Collector wherein refund was again claimed of said $86,355.86.

VII.

On March 14, 1925, the Paper Company filed with the Collector a tentative return of consolidated net income of itself and affiliates for 1924 and at the time of such filing paid to the Collector $15,000 in part payment of the estimated tax. On June 15, 1925, the Paper Company filed with the Collector a completed return of the 1924 consolidated net
94 income of itself and affiliates. Said completed return showed a tax of $70,926.94, which amount, except for the payment of $15,000 already made, was paid to the Collector as follows:

June 15, 1925	$20,463.47
September 14, 1925	17,731.74
December 14, 1925	17,731.73

On December 24, 1927, the Paper Company filed with the Collector a claim for refund of $36,904.69 of the income taxes paid to him for 1924. On March 13, 1929, the Paper Company filed with the Collector a further claim for refund wherein the amount of the 1924 taxes claimed as refundable was reduced to $29,882.76. On April 30, 1929, the Paper Company filed with the Collector a second further claim for refund wherein the amount of 1924 taxes claimed as refundable was increased to $49,670.56.

VIII.

On March 13, 1926, the Paper Company filed with the Collector a tentative return of the consolidated net income of itself and affiliates for 1925 and at the time of such filing paid to the Collector $10,000 thereon. On June 1, 1926, the Paper Company filed with the Collector a completed return of the 1925 consolidated net income of itself and affiliates. Said completed return showed a tax of $9,365.77, which amount was less than the sum already paid by $624.23, which last amount the Collector refunded to the Paper Company on October 23, 1926.

On December 24, 1927, the Paper Company filed with
95 the Collector a claim for refund of $8,515.30 of the income tax paid to him for 1925. On March 13, 1929, the Paper Company filed with the Collector a further claim for refund wherein the amount of 1925 taxes claimed as refundable was reduced to $6,401.49. On April 30, 1929, the Paper Company filed with the Collector a second further claim for refund wherein the amount of 1925 taxes claimed as refundable was further reduced to $3,400.75.

IX.

(a) In February, 1921, and March, 1924, the Commissioner of Internal Revenue, hereinafter called the "Commissioner," assessed an aggregate amount of $759,838.91 as additional taxes upon the 1917 consolidated income of the Paper Company and its affiliates. In March, 1924, the Commissioner assessed $884,665.66 as additional taxes upon the 1918 consolidated income of the Paper Company and its affiliates. Claims for abatement of $498,111.21 of the 1917 assessment were rejected on February 4, 1925. A claim for abatement of the 1918 assessment was rejected January 23, 1925. On January 23, 1925, the Commissioner notified the Paper Company and its affiliates of his determination of deficiencies of $613,248.82 and $1,403,435.47 in taxes upon the consolidated income of the Paper Company and its affiliates for 1919 and 1920, respectively. On February 21, 1925, the

Paper Company and its affiliates filed petitions with the United States Board of Tax Appeals, hereinafter called the Board, for redetermination of the said additional taxes assessed for 1917 and 1918. On March 19, 1925, the
96 Paper Company and its affiliates filed petitions with the Board for redetermination of the deficiencies determined for 1919 and 1920.

(b) While said proceedings were pending before the Board, the Paper Company and its affiliates held conferences with the Commissioner and other representatives of the Treasury Department for the purpose of ascertaining and agreeing upon the amount of tax owed for each of said years 1917 to 1920, inclusive. As the result of said conferences, the Paper Company and the Commissioner entered into a written stipulation dated February 25, 1926. Said stipulation was filed with the Board February 26, 1926. The first paragraph of said stipulation was as follows:

"It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the 'taxpayer,' by its counsel, that the deficiency in tax of said taxpayer for the taxable years 1917, 1918, 1919, and 1920 shall be determined and assessed in accordance with the following agreement."

Following that paragraph the facts ascertained and agreed upon were set out in detail as to each item in dispute. The last paragraph of said stipulation was as follows:

"It is further stipulated and agreed that the understatement of the amount of the taxable net income as shown by the returns filed by the taxpayer herein for each of the taxable years 1917, 1918, 1919, and 1920 was due to negligence on the part of the taxpayer but without intent to defraud."

(c) By letter dated February 25, 1926, the Commissioner advised the Paper Company as follows:

97 "Confirming the agreement made with the Commissioner of Internal Revenue on February 24, 1926, you are advised that the amount of the penalty to be assessed against you as the result of the negligent understatement of your tax liability for the taxable years 1917, 1918, 1919, and 1920 will be compromised by accepting a sum equal to 6 per cent per annum on the amount of the deficiencies determined and assessed in accordance with the stipulation this date entered into between the taxpayer and the representative of

this office, from the date the deficiencies became due and payable to the date of payment."

(d) On February 26, 1926, the following further written stipulation was signed and filed with the Board:

"It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by its attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the 'taxpayer,' by its counsel, that the taxpayer's deficiency in tax for the taxable years 1917, 1918, 1919, and 1920 shall be determined by the Board of Tax Appeals in accordance with the agreement entered into between the taxpayer and the Commissioner on February 25, 1926, a copy of which is hereto attached, marked 'Exhibit A', and made a part of this stipulation."

The exhibit A attached to said stipulation is the written agreement of February 25, 1926, referred to in subparagraph (b) above.

(e) On February 26, 1926, the Board entered the following order in respect of said proceedings then pending before it:

"This appeal coming on to be heard on February 26, 1926, the taxpayer being represented by Ralph M. Shaw, Esq., and the Commissioner being represented by E. C. Lake, Esq., and it appearing that the parties have entered into a certain stipulation which was filed on this date, and it appearing that the parties have agreed to compute the tax in accordance with the stipulation aforesaid; Now, therefore, on agreement of counsel for both parties, it is

98 "Ordered, That the tax shall be computed in accordance with the stipulation filed this date and referred to hereinabove. Final determination of the deficiency will be made under rule 50 of the Board's Rules of Practice on consent of the parties or on 10 days' notice by either party to the adverse party."

(f) On March 6, 1926, the following further stipulation was filed with the Board in said proceedings:

"It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the 'taxpayer,' by its counsel, that the amount of the deficiency due from the taxpayer or overas-

sessment in the above-entitled appeals for each of the taxable years 1917, 1918, 1919 and 1920 is as follows:

	Tax	Penalty
1917, overassessment	$270,305.51	$227,633.03
1918, overassessment	532,722.18	139,897.55
1919, deficiency	491,360.53	165,934.19
1920, deficiency	920,772.85	255,514.47"

The above overassessments for the years 1917 and 1918 arose by reason of the Commissioner's assessing against the Paper Company additional taxes of $759,838.91 for the year 1917 and $884,665.66 for the year 1918. The additional taxes agreed upon as due by the Paper Company for the years 1917 and 1918 were in the respective amounts of $489,533.40 and $351,943.48, which amounts were respectively $270,305.51 and $532,722.18 less than the respective amounts theretofore assessed for said years as set forth in subparagraph (a) above. There was no assessment of the amounts designated "Penalty" prior to March 8, 1926.

(g) Pursuant to the stipulations filed as noted above,
99 the Board on March 6, 1926, entered three orders determining the amount owing for each year involved. The amount owing for 1917 was covered in one order; the amount owing for 1918 was covered in another order; and the amount owing for each of the years 1919 and 1920 was covered in the third order. All the orders were similar in form and content except as to the amounts stated therein. The order relating to 1917 was as follows:

"Now on the 6th day of March, 1926, the above-entitled appeal coming on to be heard on the stipulation of the taxpayer and the commissioner, signed and executed by their respective counsel, and it appearing from said stipulation and other documentary evidence submitted that the true tax liability of the Minnesota & Ontario Paper Company and its affiliated corporations for the taxable year 1917 is $531,073.65, of which the sum of $41,540.25 has heretofore been paid, and the sum of $801,379.16 has heretofore been assessed, and it further appearing that there is due a penalty of $227,633.03, no part of which has been assessed or paid:

"Now, therefore, it is considered and

"Ordered that the amount of tax deficiency and penalty due from the taxpayer be, and the same is hereby redetermined for the year 1917 to be $489,533.40 tax and $227,633.03 penalty, and that of the tax heretofore assessed there shall be abated the sum of $270,305.51 and the amount of the penalty of $227,633.03 shall be assessed and paid."

The stipulation referred to in said order is the stipulation quoted in subparagraph (f) above. The "other documentary evidence" referred to in said orders is a computation prepared by representatives of the Paper Company and its affiliates and the Commissioner and filed with the Board March 6, 1926. Therein the addition to the tax for
100 each year computed at the rate of six per centum per annum is designated both "penalty interest" and "interest". Said computation was made pursuant to and in accordance with the stipulation referred to in subparagraph (b) above and the letter of the Commissioner referred to in subparagraph (c) above, as well as the Board's order of February 26, 1926, referred to in subparagraph (e) above.

(h) Thereafter, on March 8, 1926, the Commissioner, in accordance with the Board's orders, assessed on his March, 1926, assessment list the amounts of the deficiencies for 1919 and 1920 and the amounts designated as "penalties" for 1917, 1918, 1919, and 1920, and issued certificates of overassessment of the amounts to be abated for the years 1917 and 1918. On March 12, 1926, the Collector issued notices and made demand for each of the years as follows:

Year	Tax	Amount called "Penalty" in Board's orders	Interest	Total
1917	$ 489,533.40	$227,633.03		$ 717,166.43
1918	351,943.48	139,897.55		491,841.03
1919	491,360.53	165,834.17	807.71	658,022.41
1920	920,772.85	255,514.46	1,513.59	1,177,800.90
Total	$2,253,610.26	$788,879.21	$2,321.30	$3,044,810.77

The total of the amounts designated as "Penalty" and of the interest is $791,200.51.

On March 22, 1926, the Paper Company paid to the Collector $3,044,810.77, the sum of the foregoing demands.

In said assessment list of March, 1926, the amount of the addition to the tax computed at the rate of six per cent per annum is set out as a separate and distinct item in respect of each of the years 1917 to 1920, inclusive.

101 X.

On June 15, 1927, the Paper Company filed with the Collector its consolidated income tax return for the year 1926 reporting thereon a consolidated net loss and no tax liability. On October 28, 1931, the Commissioner advised the Paper Company that an audit of its return disclosed a tax

liability of $41,566.02, which amount, together with interest of $11,539.98, or a total of $53,106.00, was, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed on the October 31, 1931 Assessment List for the District of Minnesota. The Commissioner made a further audit of the Paper Company's return for the year 1926, and as a result thereof issued a certificate of overassessment bearing the number 1316756. By said certificate $10,222.00 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed for 1926 but outstanding and unpaid as follows: income taxes, $33,565.47; interest thereon to October 31, 1931, $9,318.53; total, $42,884.00.

XI.

On June 15, 1928, the Paper Company filed with the Collector its consolidated income tax return for the year 1927 reporting a consolidated net loss and no tax liability. On the October 31, 1931 Assessment list for the District of Minnesota, the Commissioner, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed a tax for 1927 of $50,010.72, together with interest of $10,893.84, a total of $60,-
102 894.56. The Commissioner made a further audit of such return for the year 1927 and as a result thereof issued a certificate of overassessment bearing the number 1316757. By said certificate $13,449.44 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed for 1927 but outstanding and unpaid as follows: income taxes, $38,965.14; interest thereon to October 31, 1931, $8,479.98; total, $47,445.12.

XII.

(a) On May 11, 1929, the Paper Company filed with the Collector its consolidated income tax return for the year 1928 reporting a consolidated net loss and no tax liability. The Commissioner, upon an audit of said return, determined a deficiency in tax for the said year 1928 in the sum of $7,758.58 tax and $518.34 interest thereon, and on April 26, 1930, said amount was by the Commissioner assessed against the Paper Company, and the same was paid to the Collector as set out in subparagraph (b) hereof. On the October 31, 1931 Assessment List for the District of Minnesota, the Commissioner, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed an additional tax for 1928 against the Paper Company in the amount of $42,166.52 and interest thereon of $6,646.71, which amounts, together with the previous assessment, made April 26, 1930, of $7,758.58 in

taxes and $518.34 in interest thereon (which last amounts had been paid to the Collector prior to October 31, 1931, as hereinafter set out in subparagraph (b) hereof), made a total of $57,090.15. The Commissioner made a further
103 audit of such return for the year 1928 and as a result thereof issued a certificate of overassessment bearing the number 2223612. By said certificate $34,543.10 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed for the year 1928 but outstanding and unpaid as follows: income taxes, $12,774.52; interest thereon to October 31, 1931, $1,495.61; total, $14,270.13.

(b) On April 29, 1930, pursuant to a demand of the Collector, the Paper Company paid to him $7,758.58, together with interest thereon of $518.34, the additional tax and interest for the year 1928 assessed by the Commissioner on the April 26, 1930 Assessment List for the District of Minnesota. On February 9, 1932, the receivers filed a claim for refund of such additional tax and interest so paid. The grounds for refund were therein stated as follows:

"Reference is herewith made to a 'Statement of Objections' dated January 27, 1932, filed by C. T. Jaffray and R. H. M. Robinson, Receivers for Minnesota and Ontario Paper Company, against the additional assessment of corporation income taxes for years 1926, 1927 and 1928, and on basis of said statement, the taxpayer is entitled to a refund for the year 1928 amounting to $7,758.58 plus interest thereon as provided by law.

"All of the facts recited in said statement are incorporated herein by reference with the same force and effect as if fully rewritten herein."

The "Statement of Objections" dated January 27, 1932, to which the claim for refund makes reference, alleged as error the disallowance by the Commissioner of the
104 deduction for 1926 of $790,355.20 of the amount of $791,200.51 referred to in Section IX (h) above. Said claim for refund was rejected by the Commissioner and the receivers of the Paper Company notified thereof by letter dated July 13, 1933.

XIII.

In making his final determination of income-tax liability for the year 1926, the Commissioner did not allow as a deduction the item of $788,879.21 designated in the Board's orders as penalties, and did not allow as a deduction $1,475.99

of the amount paid by the Paper Company as interest, all as set out in paragraph IX (h) hereof. In arriving at the total tax liability of $33,565.47 for the year 1926, the Commissioner determined a consolidated net income of $248,-633.10. In arriving at the total tax liability of $38,965.14 for the year 1927, the Commissioner determined a consolidated net income of $288,630.69. In arriving at the total tax liability of $20,533.10 for the year 1928, the Commissioner determined a consolidated net income of $187,094.55. The foregoing consolidated net incomes for the years 1926, 1927, and 1928, were arrived at as to each company of the affiliated group as follows:

Year 1926		
Net Income:		
Minnesota and Ontario Paper Company		$462,609.08
Falls Lumber and Coal Company		41,400.37
		$504,009.45
Less Net Losses:		
International Lumber Company	$163,108.72	
Minnesota, Dakota & West. Ry. Co.	16,874.38	
Rainy River Improvement Company	19,860.81	
Minnesota Forest Products Company	55,532.44	255,376.35
Consolidated Net Income for 1926		$248,633.10
Year 1927		
Net Income:		
Minnesota and Ontario Paper Company		$678,568.62
Falls Lumber & Coal Company		32,490.43
		$711,059.05
Less Net Losses:		
International Lumber Company	$312,502.11	
Minnesota, Dakota & West. Ry. Co.	36,222.37	
Rainy River Improvement Co.	20,519.49	
Minnesota Forest Products Co.	53,184.39	422,428.36
Consolidated Net Income for 1927		$288,630.69
Year 1928		
Net Income:		
Minnesota and Ontario Paper Company		$314,796.00
Minnesota Dakota and Western Railway Co.		48,828.43
Falls Lumber and Coal Company		21,967.71
		$385,592.14
Less Net Losses:		
International Lumber Company	$130,016.31	
Rainy River Improvement Co.	14,719.76	
Minnesota Forest Products Co.	53,761.52	198,497.59
Consolidated Net Income for 1928		$187,094.55

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XIV.

On June 12, 1933, the Paper Company and its affiliates executed, and on July 7, 1933, the Commissioner executed, with the approval of the Secretary of the Treasury on the same day given, an agreement entered into under and in pursuance of Section 606 of the Revenue Act of 1928. The agreement provided in part as follows:

"Whereas, there has been a determination of the tax liability of said taxpayers in respect of income tax imposed by the Revenue Acts of 1921, 1924, 1926 and 1928, for each taxable period stated above falling under the provisions of these acts in the sum of

106 $17,500.00 for the calendar year 1922,
136,925.19 for the calendar year 1923,
47,022.71 for the calendar year 1924,
1,565.77 for the calendar year 1925,
33,565.47 for the calendar year 1926,
38,965.14 for the calendar year 1927, and
20,533.10 for the calendar year 1928,

exclusive of any penalty or interest applicable thereto as provided by law:

"Now, This Agreement Witnesseth, that said taxpayers and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if this agreement is approved by the Secretary of the Treasury, or the Under Secretary, within one year from the date this Agreement is signed by said taxpayers.

"Reserving, however, to the taxpayers the right to contest the disallowance of the deduction claimed for the year 1926 in the amount of $790,455.20, which amount was paid, on March 22, 1926, to the United States Government in connection with the payment of additional Federal income, war-profits and excess-profits taxes for the calendar years 1917 to 1920, inclusive, and which amount the taxpayers contend was deductible as interest on deficiencies in taxes, and/or was deductible as a penalty, which contentions the Government denies, and reserving to the taxpayers the right to any benefit from the reduction in Federal income taxes, for the years 1926, 1927 and 1928, that will result in the event of a final conclusion of the issues favorable to the taxpayers."

XV.

(a) The Paper Company was organized in 1908 as the Minnesota and Ontario Power Company; its name was changed in 1918 to the Minnesota and Ontario Paper Company.

(b) Upon organization the Paper Company built a newsprint mill at a power site on the Rainy River at International Falls, Minnesota. The Rainy River is part of the boundary between the United States and Canada. After a few years the output of the International Falls mill was
107 inadequate to meet the demands of the Paper Company's customers, and steps were taken by the Paper Company to establish another newsprint paper mill on the Canadian side of the power site in the Town of Fort Frances, Ontario. For that purpose, the Paper Company caused the Power Company, all of whose capital stock the Paper Company then and at all times since has owned, to develop the power on the Canadian side of the Rainy River in Fort Frances, and to erect there a second newsprint paper mill, which was completed in 1914. At about the same time the Paper Company caused the Fort Frances Company to be organized to operate this second mill, and took title to all the latter's then-issued capital stock, which consisted of 500 shares; in 1920 the Fort Frances Company issued 28,100 additional shares, all of which became and have since been owned by the Power Company.

(c) The newsprint paper mill at Fort Frances has ever since erection been owned by the Power Company, but has at all times been operated by the Fort Frances Company under lease from the former. The Fort Frances Company has never had any business other than the operation of said mill.

(d) In addition to holding title to the newsprint paper mill, the Power Company has engaged solely in the production and sale of electric power to the Fort Frances Company and to the inhabitants of the Town of Fort Frances and of the Township of McIrvine in Canada. By far the greater proportion of the power has at all times been furnished to and consumed by the Fort Frances Com-
108 pany. The power site was developed by the Power Company for the purpose of supplying electric power for the operation of its newsprint paper mill. The furnishing of electricity to the inhabitants was imposed as a condition of the granting of the right to develop the power site.

(e) About 1909 the Paper Company, upon commencement of its newsprint manufacturing operations, organized a sales department for the purpose of selling and it did sell its product to newspaper publishers in the Middle West of the United States. The demand for newsprint paper soon exceeded the productive capacity of the International Falls mill alone, and ever since the commencement of operations at the Fort Frances mill the newsprint paper necessary to meet this excess demand has been supplied to the Paper Company in large part by the Fort Frances Company. Prior to 1921, the paper furnished to the Paper Company by the Fort Frances Company was furnished pursuant to written contracts between them. The written contract for 1920 stated that the Fort Frances Company agreed to sell and the Paper Company agreed to buy during that year 30,000 tons, more or less, subject to the following, among other conditions:

(1) Delivery of the paper to the Minnesota Company shall be made on board cars at Fort Frances, Ontario;

(2) The price shall be adjusted from month to month and shall be a price equal to the average price at which the Minnesota Company may sell paper during the month, less a discount of five per cent.

(f) Since 1920 there have been no written contracts respecting newsprint paper supplied to the Paper Com-
109 pany by the Fort Frances Company. Since the beginning of 1921 the practice of the two companies as respects newsprint paper supplied to the Paper Company by the Fort Frances Company has been as follows:

From time to time the paper Company advises the Fort Frances Company at Fort Frances that the Paper Company requires certain quantities of newsprint paper. Upon receipt of such advice, the Fort Frances Company regulates manufacturing operations of the Fort Frances mill so as to turn out quantities of paper as required by the Paper Company. As the manufactured paper comes from the paper machines, it is wrapped, weighed, and delivered to railroad carriers by loading into freight cars held in readiness to receive the same on the tracks on the Fort Frances mill property. At the time of delivery of the paper to the carriers, the Fort Frances Company invoices the Paper Company for the paper then delivered. Such invoices have uniformly been signed by the Paper Company as follows:

Certified Correct

MINNESOTA & ONTARIO PAPER CO.,
Per (Signature of Officer or employee)
Agent for Importer.

All shipping instructions to carriers covering paper supplied as aforesaid have been furnished and given to the carriers by the Paper Company. All transportation charges from the Fort Frances mill have been paid by the Paper Company. Practically all the paper supplied to the Paper Company has been shipped by the Paper Company
110 into the United States. All Consumption Entry Papers (commonly known as customs papers) relating to the paper so shipped have been arranged for and signed by the Paper Company. In such customs papers the Paper Company has uniformly been described and has executed the same as purchaser, owner, and importer.

At no time has the Fort Frances Company had storage facilities for any substantial amount of manufactured newsprint paper. Its storage capacity in respect of such paper has never been in excess of approximately 100 tons. Newsprint paper has been manufactured at the Fort Frances mill only pursuant to orders for the same already in hand.

All paper manufactured at the Fort Frances mill and supplied to publishers in the United States through the Paper Company has been supplied under and pursuant to a uniform type of written agreement wherein the Paper Company is called the seller and the publisher is called the purchaser and wherein such seller agrees to sell and deliver and such purchaser agrees to buy and pay for the number of tons of newsprint paper therein specified. The Paper Company has made all financial and credit arrangements with the publishers. All accounts with the publishers have run in the name of the Paper Company, which has made all collections upon the same. The Paper Company has charged interest at the rate of seven per cent per annum on unpaid publishers' accounts. At no time has the Paper Company been called upon to make or has made any accounting to the Fort Frances Company in respect of publishers' accounts,
111 financial and credit arrangements with publishers, or payments received or collected upon publishers' accounts.

(g) At no time has the Fort Frances Company had any selling organization of its own. During all years since and including 1921, there has been an established practice in the newsprint paper industry, in instances where the manufacturer does not have a selling organization of his own, of disposing of his product to independent distributors or selling concerns at prices which yield to the manufacturer ninety-seven per cent of the prevailing market price received by

the independent distributors or selling concerns from the publishers or consumers.

The price charged the Paper Company by the Fort Frances Company for newsprint paper supplied to the former as stated above has at all times since the beginning of 1921 been ninety-seven per cent of the prevailing market price charged to the newspaper publishers.

The amount of newsprint supplied to the Paper Company by the Fort Frances Company under the practice described above from 1921 to 1927, inclusive, together with the annual total price charged the Paper Company for the same and also the average price per ton is as follows:

Year	No. of Tons	Net Credits from Sales to M & O P. Co.	Average per Ton
1921	31,194.399	$3,030,314.02	$97.14
1922	37,885.930	2,617,135.31	69.08
1923	35,066.981	2,551,124.54	72.73
1924	38,172.5015	2,743,120.50	71.86
1925	41,235.419	2,790,294.94	67.69
1926	46,888.6095	2,956,304.71	63.05
1927	62,298.5835	3,927,748.58	63.05

112 (h) The books of both the Paper Company and the Fort Frances Company have at all times mentioned been kept on the accrual basis, and returns of income to the United States Government by the Paper Company have been made on that basis. From 1921 to 1926, inclusive, neither the Paper Company nor the Fort Frances Company entered on its books any accruals in respect of any interest on unpaid balances owing for newsprint supplied to the Paper Company by the Fort Frances Company. During the year 1926 changes were made in the accounting practices of both corporations, and the Paper Company then set up on such balances, which were in the form of open accounts, accrued interest for 1925 and 1926 in favor of the Fort Frances Company. In 1927 further accounting changes were made, and in connection therewith credits were then set up on the Paper Company's books in favor of the Fort Frances Company for interest accrued on such balances owing the Fort Frances Company for 1921 to 1924, inclusive. The amounts entered as aforesaid are as follows:

Interest for Year	Year in which entered	Interest credited to account of Fort Frances Company
1921	1927	$164,525.98
1922	1927	226,926.37
1923	1927	238,371.06
1924	1927	257,145.82
1925	1926	290,172.58
1926	1926	310,863.23

The interest so credited was computed at the rate of six per cent per annum. Entries corresponding to the foregoing entries made on the books of the Paper Company were
113 made at the same time on the books of the Fort Frances Company. No net amount of interest was credited in favor of the Fort Frances Company for 1927. In that year the Paper Company paid and discharged its obligation to the Fort Frances Company for all unpaid newsprint purchases, together with interest therefor on open account, by the transfer to the latter of certain assets; no payment of the interest accruals in favor of the Fort Frances Company had been made prior to that time.

(i) During 1921 to 1927, inclusive, the Paper Company owned bonds of the Power Company, issued by the latter to finance the construction of the power development and the Fort Frances newsprint mill, as well as to finance additions to said mill from time to time. Interest upon such bonds received by the Paper Company was reported to the United States Government as taxable income, and was in the amount of $210,000 for each of the years 1921 to 1924, inclusive, in the amount of $277,500 for 1925, in the amount of $300,000 for 1926, and in the amount of $390,000 for 1927.

(j) The following is a statement of the interest transactions between the Paper Company and the Fort Frances and Power companies for 1921 to 1927, inclusive, on account of the open accounts set up in respect of newsprint paper supplied to the Paper Company by the Fort Frances Company, and on account of interest on the bonds of the Power Company held by the Paper Company:

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Year	Interest Charged to Paper Company by Ft. Frances Co. on open account	Interest credited to Paper Co. by Ft. Frances Co. on open account	Interest credited to Paper Co. by Power Co. on bonds
1921	$164,525.98	—	$210,000.00
1922	228,928.37	—	210,000.00
1923	238,371.06	—	210,000.00
1924	287,143.82	—	210,000.00
1925	299,172.58	—	277,500.00
1926	310,593.23	—	300,000.00
1927	—	$369,966.78	390,000.00

(k) The above interest paid by the Paper Company to the Fort Frances Company in the year 1927 was reported by the latter for income-tax purposes to the Government of the Dominion of Canada as income received and a tax has been

paid thereon by the Fort Frances Company to the Canadian Government. No income tax return of any nature and no payment of income tax of any nature was made to the United States by the Fort Frances Company in respect of the years 1921 to 1927, inclusive.

All cash payments made from time to time from 1921 to 1927, inclusive, by the Paper Company to or for the account of the Fort Frances Company on open account were paid in Canadian funds.

In arriving at its final income-tax liability for the years 1921 to 1926, inclusive, the Commissioner, in determining the net taxable income of the Paper Company for each of said years, allowed the Paper Company to offset the respective amounts of interest set forth in subparagraph (j) above as interest due, payable, and credited to the Fort Frances Company, against interest credited to the Paper Company by the Power Company and other Canadian
115 subsidiaries of the Paper Company. The Commissioner reduced the Paper Company's net taxable income accordingly. Such of the aforesaid offsets as related to 1922 to 1926, inclusive, were reflected in the amount of tax determined and agreed upon for each of said years in the agreement referred to in paragraph XIV above.

(l) In October, 1933, the Paper Company requested the Commissioner, pursuant to the provisions of Section 240 (f) of the Revenue Act of 1926 and of Section 240 (d) of the Revenue Acts of 1921 and 1924, to consolidate the accounts of the Paper Company, the Fort Frances Company, and the Power Company. The Commissioner has not acted upon said request and consolidation has not been made.

(m) Not later than March 15th of each of the years 1922 to 1927, inclusive, the Paper Company filed with the Collector for the preceding year on Form 1042 its "Annual Return of Income Tax to be Paid at Source" and paid to the Collector the amount of tax shown as due thereon. In each such return it is affirmed under oath in behalf of the taxpayer that the items and accounts therein reported constitute "a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to non-resident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments," during the calendar year in respect of which such return was prepared. In none of such returns was any report made or tax paid in respect of any interest ac-
116 crued in favor of the Fort Frances Company upon unpaid balances for newsprint paper supplied by the Fort

Frances Company to the Paper Company as aforesaid and nowhere upon such return did the name of the Fort Frances Company appear.

(n) On October 4, 1932, the Deputy Collector for the District of Minnesota, under the provisions of Section 3176 of the Revised Statutes, prepared and forwarded to the Commissioner a delinquent withholding-tax return for the Paper Company, then in receivership under an order of this Court, reporting $164,525.98 as income paid by the Minnesota and Ontario Paper Company to Fort Frances Pulp and Paper Company, Ltd., during the year 1921. The Commissioner determined withholding tax and penalty and interest in respect thereof in the respective amounts of $16,452.60 tax, $4,113.15 penalty, and $10,556.14 interest. The Commissioner assessed against the said Paper Company the total amount of $31,121.89 on his July 10, 1933 assessment list for the District of Minnesota. Prior to said date neither the Commissioner nor any one else acting or purporting to act in behalf of the United States made any assessment or issued any notice of deficiency as respects or entered upon any proceedings to collect any withholding taxes claimed to be owed by the Paper Company by reason of said interest credit of $164,525.98.

XVI.

(a) Between July 7, 1933, and July 13, 1933, after execution of the agreement referred to in paragraph XIV
117 above, the Commissioner prepared a certificate of overassessment bearing the number 2011190 for the year 1922 in the amount of $49,318.77, a certificate of overassessment bearing the number 2014278 for the year 1923 in the amount of $29,427.69, a certificate of overassessment bearing the number 2030102 for the year 1924 in the amount of $80,450.55, and a certificate of overassessment bearing the number 2029738 for the year 1925 in the amount of $12,193.99. On July 13, 1933, the Commissioner approved a schedule of overassessments on which appeared the aforesaid overassessments, and transmitted the same, together with the foregoing certificates of overassessment, to the Collector for his action in accordance with the instructions appearing on said schedule.

(b) On July 20, 1933, the Collector signed the schedule of overassessments and certified that the overassessments for the years 1922 to 1925, inclusive, were adjusted as follows:

1. The overassessment of $49,318.77 for the year 1922 was determined to be an overpayment and was credited in the

amounts of $42,884.00 and $6,434.77 against the additional income taxes assessed against th Paper Company for the years 1926 and 1927, respectively, and referred to in Sections X and XI above. Interest of $24,034.76 computed upon said overpayment of $49,318.77 was credited against the outstanding and unpaid withholding taxes assessed against the Paper Company for the year 1921 referred to in Section XV (n) above.

2. The overassessment of $29,427.69 for the year 1923 was determined to be an overpayment and was credited against the additional income taxes assessed against the Paper Company for the year 1927, referred to in Section XI above. Of the interest of $12,142.75 computed upon
118 said overpayment of $29,427.69 for the year 1923, $1,235.69 was credited against the outstanding and unpaid withholding taxes assessed against the Paper Company for the year 1921, referred to in Section XV (n) above, and the remainder of such interest in the amount of $10,907.06 was credited against withholding taxes assessed against the Paper Company for the years 1930 and 1931.

3. Of the overassessment of $80,450.55 determined by the Commissioner for the year 1924, the amount of $56,546.32 was abated and the balance, $23,904.23. was determined to be an overpayment and was credited in the respective amounts of $11,582.66 and $12,321.57 against the additional income taxes assessed against the Paper Company for the years 1927 and 1928 and referred to in Sections XI and XII above. Of the interest of $8,521.94 computed upon said overpayment of $23,904.23 for the year 1924, $3,038.92 was credited against the withholding taxes assessed against the Paper Company for the year 1921, referred to in Section XV (n) above, and the remainder of such interest in the amount of $5,483.02 was credited against withholding taxes assessed against the Paper Company for the years 1930 and 1931.

4. Of the overassessment of $12,193.99 determined by the Commissioner for the year 1925, the amount of $4,393.99 was abated and the balance, $7,800.00, was determined to be an overpayment. Of such overpayment, $5,851.44 was credited against outstanding and unpaid withholding taxes assessed by the Commissioner against the Paper Company for the years 1930 and 1931, and the remainder of such overpayment in the amount of $1,948.56 was credited against the additional income taxes assessed by the Commissioner against the Paper Company for the year 1928 and referred to in Section XII above. The interest computed upon said overpayment of $7,800.00 in the amount of $2,501.09 was credited against

the outstanding withholding taxes assessed against the Paper Company for the year 1921, referred to in Section XV (n) above.

(c) The interest computed upon the overpayments for 1922 to 1925, inclusive, was credited as set out in subparagraph (b) above rather than as shown on the certificates
119 of overassessment referred to in subparagraph (a) above.

XVII.

On August 16, 1933, the Commissioner, through the Collector, delivered to the Paper Company the certificates of overassessment referred to in subparagraph XVI (a) above.

On August 31, 1933, the Commissioner mailed to the Paper Company two letters. Said letters referred, among other things, to the claims for refund filed for the years 1922 to 1925, inclusive, as aforesaid. By said letters the Paper Company was notified that said claims for refund "were disallowed to the extent indicated" in the certificates of overassessment referred to in Section XVI (a) above.

XVIII.

The amounts of overassessments and taxes determined by the Commissioner in the certificates of overassessment referred to in Section XVI (a) above are the amounts of taxes assessed for the years 1922, 1923, 1924, and 1925, respectively, in excess of the tax liability for each of those years mutually agreed upon in the agreement referred to in Section XIV above.

The amounts of the overassessments were determined on the basis of grounds for refund specified in the claims for refund filed as aforesaid for the years 1922 to 1925, inclusive.

120 The Court makes the following

Conclusions Of Law.

1. This proceeding is a proceeding brought for the recovery of overpayments of internal-revenue taxes for each of the years 1922 to 1925, inclusive, and 1928, together with interest on such overpayments from the respective dates of payment thereof.

2. This Court has jurisdiction of the proceeding and of the whole thereof.

3. Claims for refund of such overpayments were filed in the manner and within the time therefor prescribed by the statutes relating thereto.

4. The agreement referred to in Section XIV of the foregoing findings of fact is a closing agreement entered into under and pursuant to the provisions of Section 606 of the Revenue Act of 1928. By said agreement it was and is conclusively determined and established, as respects this proceeding and the parties hereto, and the Court so concludes, that for each of the years 1922 to 1925, inclusive, the Paper Company paid income taxes to the Collector in behalf of itself and affiliates in excess of the amount legally due and owing, the amount of such excess for each of said years being as follows:

Year	Amount of Overpayment
1922	$49,318.77
1923	29,427.69
1924	23,904.23
1925	7,800.00

121 The amounts of said overpayments were determined in said closing agreement on the basis of grounds for refund specified in the claims for refund filed for the years 1922 to 1925, inclusive.

5. The claims for refund for the years 1922 to 1925, inclusive, were disallowed and rejected on August 31, 1933. The claim for refund for the year 1928 was disallowed and rejected July 13, 1933.

6. This proceeding was commenced within the period permitted by law for that purpose.

7. The grounds on which recovery of overpayments is sought in this proceeding for each of the years 1922 to 1925, inclusive, and 1928 were specified as grounds for refund in said claims for refund filed in respect of each of said years.

8. The amount of $791,200.51 paid to the Collector on March 22, 1926, as part of the total payment of $3,044,810.77 that day made to the Collector was and is at least in part interest, and if any portion thereof was penalty, such portion does not exceed the sum of $112,680.51. The Paper Company was and is entitled under Section 234 (a) (1) and (2) of the Revenue Act of 1926 to have said amount of $791,200.51 deducted from gross income for the purpose of determining taxable net income for the year 1926. Disallowance by the Commissioner of the deduction of $790,355.20 of said amount

of $791,200.51 was and is without authority and contrary to law.

122 9. The Paper Company and its affiliates were and are entitled to have their consolidated taxable net income for the year 1927 reduced by reason of any net loss sustained in the year 1926, all in accordance with the statutes in such case made and provided.

10. The Paper Company and its affiliates were and are entitled to have their consolidated taxable net income for the year 1928 reduced by reason of any net loss sustained in the year 1926 which was not absorbed by the consolidated taxable net income in the year 1927 as a result of the deduction of said amount of $790,355.20 from gross income for the purpose of determining taxable net income for the year 1926, all in accordance with the statutes in such case made and provided.

11. (a) The Paper Company and its affiliates sustained a consolidated net loss for the year 1926 in the amount of $541,722.10, which amount is apportionable according to law as follows:

Paper Company	$304,476.89
International Lumber Company	151,528.37
Minnesota, Dakota & Western Railway Company	15,676.35
Rainy River Improvement Company	18,450.73
Minnesota Forest Products Co.	51,589.76
Total	$541,722.10

(b) The Paper Company and its affiliates realized a consolidated net income for the year 1927 in the amount of $288,630.69, which amount is apportionable according to law as follows:

Paper Company	$275,442.33
Falls Lumber & Coal Company	13,188.36
	$288,630.69

123 After carrying forward the net losses sustained in respect of the year 1926 in the manner required by law, the taxable net income realized for the year 1927 by the Paper Company and its affiliates is the amount of $13,188.36, which amount was realized by Falls Lumber and Coal Company.

(c) The Paper Company and its affiliates realized a consolidated net income for the year 1928 in the amount of $187,094.55, which amount is apportionable according to law as follows:

Paper Company	$152,743.30
Minnesota, Dakota & Western Railway Company	23,692.22
Falls Lumber & Coal Company	10,659.03
Total	$187,094.55

After carrying forward, in the manner required by law, the balance of the net losses sustained in respect of the year 1926 and not absorbed by taxable net income realized in the year 1927, the taxable net income realized for the year 1928 by the Paper Company and its affiliates is the amount of $142,383.64, which amount was realized by the Paper Company and its affiliates as follows:

Paper Company	$123,708.74
Minnesota, Dakota & Western Railway Company	8,015.87
Falls Lumber & Coal Company	10,659.03
	$142,383.64

(d) No part of the assessment of $53,106.00 made by the Commissioner on October 31, 1931, in respect of the year 1926 was lawfully due or owing.

(e) Of the assessment of $60,894.56 made by the Commissioner on October 31, 1931, in respect of the year 1927, no part thereof was lawfully due or owing except the
124 amount of $1,510.43 plus interest thereon from March 15, 1928, to October 31, 1931. Said amount of $1,510.43 is calculated as follows:

Net income of Paper Company		$275,442.33
Net loss of Paper Company for 1926	$304,476.89	
Amount of said net loss allowable in 1927		275,442.33
Taxable net income of Paper Company		$ 0.00
Net income of Falls Lumber and Coal Company		13,188.36
Consolidated taxable net income		$ 13,188.36
Less exemption granted by Section 236 (b) of the Revenue Act of 1926		2,000.00
Consolidated taxable net income subject to tax		$ 11,188.36

Tax thereon at 13½%		1,510.43
Tax paid for 1927		0.00
Tax owing for 1927		$ 1,510.43

(f) The whole of the sum of $7,758.58 plus $518.34 interest thereon paid by the Paper Company on April 29, 1930, in respect of the year 1928 was lawfully due and owing, and no part thereof is legally refundable to the Paper Company or to the plaintiffs.

Of the assessment of $48,813.23 made by the Commissioner on October 31, 1931, in respect of the year 1928, no part thereof was lawfully due or owing except the amount of $9,327.85 plus interest thereon from March 15, 1929, to October 31, 1931. Said amount of $9,327.46 is calculated as follows:

Net income of Paper Company		$152,743.30
Less net loss of Paper Company for 1926 not absorbed in 1927		29,034.56
Taxable net income of Paper Company		$123,708.74
125 Net income of Minnesota, Dakota & Western Ry. Co.	$23,692.22	
Less net loss of said company for 1926 not absorbed in 1927	15,676.35	
Taxable net income of said company		8,015.87
Taxable net income of Falls Lumber & Coal Company		10,659.03
Consolidated taxable net income		$142,383.64
Tax thereon at 12%		$ 17,086.04
Less tax paid		7,758.58
Tax owing for 1928		$ 9,327.46

12. To the extent that the overpayments for the years 1922 to 1925, inclusive, and accumulated interest thereon were applied by the Commissioner as credits against the deficiency claimed by the Commissioner to be owing and unpaid for the year 1926, and to the extent that such overpayments and accumulated interest thereon were applied by the Commissioner as credits against the deficiencies claimed by the Commissioner to be owing and unpaid for the years 1927 and 1928 in excess of the amounts lawfully due and

owing for said years, as hereinbefore set forth, such applications and such credits were and are wholly wrongful and contrary to law, and such credits were and are void and of no effect.

13. The $164,525.98 accrued for the year 1921 in favor of the Fort Frances Company as interest owing by the Paper Company on open account by reason of newsprint paper purchased from the former by the latter was not and is not income derived from a source within the United States.

14. No part of said amount of $164,525.98 was paid
126 to the Fort Frances Company by the Paper Company until in the year 1927, and even if said amount constituted income derived from sources within the United States, there was no obligation on the Paper Company in 1921 or at any time prior to such payment to deduct or withhold any portion of said amount or to report and pay the same to the Collector or the United States as a withholding tax.

15. During the year 1921, the Paper Company, the Power Company, and the Fort Frances Company constituted and were engaged in related trades and businesses owned or controlled directly or indirectly by the same interests within the meaning of Section 240 (d) of the Revenue Act of 1921.

16. To the extent that accumulated interest on the overpayments for the years 1922 to 1925, inclusive, was applied by the Commissioner as credits against the deficiency of $31,121.89 in withholding taxes claimed by the Commissioner to be owing and unpaid for the year 1921, such application and such credits were and are wholly wrongful and contrary to law, and such credits were and are void and of no effect.

17. The plaintiffs are entitled to judgment for the recovery and refund of the following amounts:

(a) $15,909.39 paid on June 15, 1923, together with interest on said amount to October 31, 1931 (less, however, the sum of $1,839.15, being the total of the amount of $1,510.43 lawfully due and owing as additional tax for the year 1927 and of the amount of $328.72 interest thereon from March 15, 1928, to October 31, 1931), and together with interest on $14,070.24 (being the difference between said amounts of $15,909.39 and $1,839.15) from and after October 31, 1931;

127 (b) $16,704.70 paid on September 15, 1923, together with interest on said amount to October 31, 1931 (less, however, the sum of $10,797.75, being the total of the amount

of $9,327.46 lawfully due and owing as additional tax for the year 1928 and of the amount of $1,470.29 interest thereon from March 15, 1929, to October 31, 1931), and together with interest on $5,906.95 (being the difference between said amounts of $16,704.70 and $10,797.75) from and after October 31, 1931;

(c) $16,704.68 paid on December 15, 1923, together with interest on said amount from and after said date;

(d) $29,427.69 of the amount of $41,588.22 paid on December 14, 1924, together with interest on said $29,427.69 to July 10, 1933 (less, however, the sum of $22,241.52, being the amount lawfully due and owing as withholding taxes for the years 1930 and 1931 credited by the Commissioner on July 10, 1933), and together with interest on $7,186.17 (being the difference between said amounts of $29,427.69 and $22,241.52) from and after July 10, 1933;

(e) $6,172.50 of the amount of $17,731.74 paid on September 14, 1925, together with interest on said $6,172.50 from and after said date.

(f) $17,731.73 paid on December 14, 1925, together with interest on said amount from and after said date;

(g) $7,800.00 of the amount of $9,365.77 of the amount of $10,000 paid on March 13, 1926, together with interest on said $7,800.00 from and after said date.

Interest on said amounts is to be computed in accordance with the statutes in such cases made and provided, particularly Section 614 (a) (1) of the Revenue Act of 1928 and Section 177 (b) of the Judicial Code as amended by Section 615 (a) of the Revenue Act of 1928. In addition the plaintiffs are entitled to recover their costs and disbursements herein.

128 Let judgment be entered accordingly. An exception is allowed to the defendant.

Dated this 25th day of February, 1937.

GUNNAR H. NORDBYE,
United States District Judge.

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129 Memorandum.

Plaintiffs bring this action seeking to recover the admitted overpayment of the 1922 to 1925 taxes. It appears that, within the period allowed by statute, a claim for refund

was filed, and after negotiations a closing agreement was entered into between the plaintiffs and the Commissioner wherein the correct amount of the taxes for these years was determined. Defendant asserts that by reason of the application of the overpayments, as disclosed by the certificates of overassessment, to an alleged deficiency for the years 1926 to 1928, there has been no denial of plaintiff's claim for refund, and that if plaintiffs have a right of action, or if the complaint states a cause of action, it must be construed as one wherein plaintiffs seek recovery of the overpayment by credit of the 1926 to 1928 taxes. Further, that no claim for refund has been filed for such years, and therefore this Court has no jurisdiction.

It may be noted at the outset that plaintiffs' proof of the overpayment is entirely dependent upon the closing agreement. The agreement, by reason of the statute, is binding upon all parties in absence of fraud or misstatement of material fact. The defendant does not seek to attack the validity or binding effect of the agreement, but takes the position that the Collector was not a party thereto, and hence an action thereon cannot be maintained against him. It is recognized that the Collector is not in office; that the amount involved exceeds $10,000; and that in order to maintain this action, it must be one that could have been brought against the Collector. However, it seems clear that the closing agreement constitutes a binding admission on the part of the Government that the Collector exacted an overpayment from the taxpayer in the first instance. If the closing agreement binds the Government, it necessarily must bind the Collector through whom the Government received the overpayment. It may be noted that the plaintiffs are not basing any rights upon the certificates of overassessment, except as such documents may indicate the computations of the Commissioner and the application of the overpayments, nor do the plaintiffs seek to proceed on an account stated. The closing agreement is in no way identified with the certificates of overassessment, except that such agreement formed the basis for the issuance of the certificates. Section 606 of the Revenue Act of 1928 was passed to facilitate the adjustment of tax claims. The taxes in question were paid to the Collector. He is chargeable with the erroneous collection of any excess taxes that were paid to him in his official capacity. The closing agreement is binding upon him and takes the place of the proof that is ordinarily required by the tax payer in proving affirmatively the facts and circumstances in support of the overpayment. In other words, the closing agreement constitutes an admission that, from the very nature

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thereof, must be binding upon the Collector. He is estopped to deny its legal effect. The Court has been cited to no authority that holds that a closing agreement which acknowledges an overpayment is not binding on the Collector
131 who wrongfully collected such overpayment from the taxpayer, and it would seem that the clear intendment of the statute supports the plaintiffs in their position herein that this action could have been instituted against the Collector if he were in office.

It is conceded that the statute makes it mandatory on the Commissioner to apply an overpayment to any deficiency that may exist in any other tax year, and it is further recognized that the application of the 1922 to 1925 overpayment was made upon an alleged deficiency for the years 1926 to 1928. However, it is plaintiffs' position that such action in refusing to return the admitted overpayments is equivalent to a denial of the claim for refund filed for the years in question, so the question arises whether or not the crediting of an overpayment on an alleged deficiency constitutes a rejection of the admitted overpayment for which a claim had been filed.

The authorities are quite uniform in holding that the action of a Commissioner in attempting to credit overpayments on assessments that are barred by the statute of limitations is in effect a rejection of the claim for refund filed for the year of the admitted overpayment. Pratt & Whitney Co. vs. United States, 6 F. Supp. 574 (Ct. Cl.); Moses vs. United States, 61 F. (2d) 791 (C.C.A. 2); Jelke Co. vs. Smietanka, 86 F. (2d) (C.C.A. 7). In the latter case, the court stated (p. 473):

132 "The effect of the action of the Commissioner was to decide that no money should be repaid or refunded to appellant. Whether the Commissioner arbitrarily and wrongfully retained the funds, or whether he improperly applied them as a credit, seems to us immaterial. The intent of Congress evidently was to make the action of the Commissioner in refusing repayment the starting point from which the right to begin suits should run. It matters not how erroneously the Commissioner's action may have been, or that his refusal to refund was based upon a misconception of what should be done with the money in question. Rather, it is a question of what was the legal effect of his action. We believe that when he signed the schedules of credits and refunds the inevitable effect of his action was an adjudication that no part of the money claimed for refund should be repaid. It was to all intent and purposes a disallowance of the claim for refund, and appellant, if he

sought to test the validity of such action, was bound to begin his suit within two years from that date."

It is urged, however, by the defendant that a Commissioner has no authority to apply admitted overpayments upon a barred assessment, and that such application is illegal, and it therefore seeks to distinguish between the legal effect of such an application and the mandatory compliance with the statute. But the fact that it is mandatory on the Commissioner to apply the credit on any deficiency that he or the Collector may determine to exist, should not bar the taxpayer from asserting the right that his claim for refund has been denied. In filing their claim, the plaintiffs have requested a return of the overpayment. They did not request that the overpayment be allowed, and then credited to other taxes that were claimed to be due. The refusal to return the refund in cash to the taxpayer is just as effective a denial as if the claim had been disallowed in toto. The fact that
133 the overpayment has been credited upon an alleged deficiency may properly be assigned as a reason why the tax was not refunded, and if the application upon the alleged deficiency was warranted by law, then, of course, there is an absolute defense to any action that may be brought to recover the overpayment; but the refusal to return the overpayment remains. If, for instance, a claim for refund was filed and no decision was made by the Commissioner within the six months' period, then the claimant, under the statute, could bring suit. Certainly, if suit were brought under these circumstances, a defense that the taxpayer's position was correct, but that the overpayment had been applied to a deficiency of another year, would not justify a dismissal of the action. The mere asserted defense would not dispose of plaintiff's cause of action and require him to drop his suit and file a claim for refund for the years to which the credit had been applied. Such a defense would simply constitute a reason why the overpayment had not been returned, and if the application was lawful, such a defense would dispose of the merits of the controversy.

There is no decision that specifically recognizes the application of an admitted overpayment upon a non-barred deficiency as a denial of a taxpayer's claim, so as to constitute a condition precedent to the commencement of an action. But, by analogy, it would seem that the reported cases
134 which hold that an application to a barred assessment constitutes a denial, would support the plaintiffs' position that the application herein likewise constitutes a denial of the claim. The purpose of filing a claim is to acquaint the officials of the Government with the reasons and circum-

stances in support of the taxpayer's contention that there has been an overpayment. It is undoubtedly required in order to expedite the handling of tax claim refunds so that the Government will not be overwhelmed with a large number of unnecessary suits. It must be recognized that the Government has a right to provide for certain restrictions and limitations upon the right of any citizen to commence suit against it. One of these restrictions in tax matters is the lodging of a claim for refund within a certain specified time after the payment of the tax. This condition the taxpayer herein has performed. It is conceded that its position is correct with reference to the overpayment for the years 1922 to 1925, but the Government refuses to return the money because it contends that there is an underpayment for other specified years. To obtain a refund of taxes might prove to be an endless procedure if the Government's position is to be sustained. In the instant case, if the taxpayer had filed a claim for the overpayment of the 1926 to 1928 taxes, treating the credit applied as an overpayment, then the Government, before that suit came to trial, could interpose a defense that the tax-
135 payer's position was well taken, but that the overpayment by credit was applied to another year where a deficiency existed. The Government is not prejudiced by treating the refusal to return the overpayment in cash as a denial of plaintiffs' claim so as to warrant the bringing of this action. Characterizing the failure to return the admitted overpayment for the years in question as a denial of the claim, will prevent circuitous proceedings and needless litigation. The deductibility of the so-called penalty interest item can be determined in this suit just as effectively, and with the same recognition of the rights of the defendant, as would exist if the question arose in a suit to recover the alleged erroneous credit. It is difficult to perceive any substantial distinction between an application of an overpayment to a barred deficiency, and the application of an overpayment to a deficiency which did not in fact exist. In either event, the action of the Commissioner was improper. In either case, it would be incumbent upon the Court to determine the legality of the Commissioner's act in applying the overpayment; to a barred deficiency in one instance and a non-deficiency in the other. The legal effect of applying the overpayment as a credit on a claimed deficiency would be the same as the application upon a barred deficiency. In
136 both instances, such application is tantamount to a denial of the taxpayer's claim for refund.

In passing it may be observed that the fact that the amount of taxes due for the years 1926 to 1928 was also

agreed upon at the conference between the Commissioner and the Paper Company, subject to the one question of the deductibility of $790,355.20, should not militate against the taxpayer's right to consider the application of the overpayment to the alleged deficiency for the years 1926 to 1928 as a denial of its claim for refund. It cannot be urged that the participation in the closing agreement by the taxpayer in any way constituted a waiver of its right to proceed to recover the overpayment in the 1922 to 1925 taxes. The taxpayer did not agree that such overpayment might be applied to any apparent deficiency in other years, nor did it commit itself to any particular procedure to be followed in the litigation of the deductibility of the $790,355.20 item. Further, it must be evident that, in attacking plaintiffs' right to proceed to recover the 1922 to 1925 overpayment, the Government cannot claim any prejudice by reason of any of the recitals in the closing agreement, nor by reason of anything
137 that may have been stated to the Court in charge of the trusteeship when authority was given to the plaintiffs to enter into the agreement. After the agreement had been signed and approved, the plaintiffs were free to proceed in any manner consistent with their rights under the statute.

Defendant urges that there can be no recovery of the overpayment for the year 1922 for another reason. It appears that the Paper Company had commenced an action against the Collector for recovery of the overpayment of the 1922 taxes prior to the so-called closing agreement. As one of the convenants of this closing agreement, it is provided that this action was to be dismissed with prejudice, and such a dismissal was filed. The Government now takes the position that the action having been dismissed with prejudice, the plaintiffs are estopped to bring any subsequent action against the Collector, or, in this instance, against the United States, for the 1922 overpayment. However, such dismissal should not be construed as a bar to plaintiffs' right of recovery of the admitted overpayment for that year. There is no showing that the parties intended anything more than to preclude the taxpayer from asserting in another action the al-
138 leged grounds of overpayment for that year, or to relitigate the amount thereof. When the Government acknowledged the overpayment for that year in its closing agreement, and thereby conceded that it owed a certain sum of money to the taxpayer, it is hardly in a position to assert that, with one hand it acknowledges the amount due, but with the other, it would bar the plaintiffs from recovering the overpayment. The sensible and rational construction of the action of the parties should be deemed to be an

intent to dismiss with prejudice the action pending, and to leave the taxpayer in a position comparable to that which would exist in the event an action were brought on an unliquidated claim and a dismissal with prejudice was obtained in consideration of a debtor's making delivery to a creditor of a promissory note for the amount agreed upon. A suit on the note under such circumstances would not be affected by the prior dismissal with prejudice.

Contention is made that the statute of limitations bars the action. However, Section 3226, the statute referred to by the defendant, was amended by Section 1103 of the Revenue Act of 1932. By that amendment, the only requirement is that suit must be brought within two years from the date of mailing of the notice of disallowance. These claims
139 were disallowed either in July or August, 1933; the exact date is not material because the suit was instituted in August, 1934.

Contention is further made that the plaintiffs' action cannot be sustained because they seek to recover interest as a part of the refund, which they assert was recognized and allowed by the Commissioner in the closing agreement. It appears that substantial interest was allowed on the overpayment. The defendant contends that the Collector is not responsible for interest. However, Section 177 of the Judicial Code was amended so as to provide for the recovery of interest on refunded taxes whether the judgment would be against the United States or the Collector, from the date of overpayment to a date preceding the date of refund by not more than thirty days. This statute governs the rights of the parties herein, and reads as follows (45 Stat. 791, Section 615 of the Revenue Act of 1928):

"(a) Section 177 of the Judicial Code, as amended, is amended to read as follows:

"Sec. 177. (a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except as provided in subdivision (b).

"(b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall

be allowed at the rate of 6 per centum per annum upon
140 the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue.

"(b) Subsection (a) of this section shall take effect on the expiration of thirty days after the enactment of this Act."

The cases of French Clay Blending Co. vs. Lewellyn (D. C. Pa.) 26 F. (2d) 744, and Penn Smokeless Coal Co. vs. Lewellyn, (D. C. Pa.) 26 F. (2d) 743, were decided before this amendment.

Defendant urges that the complaint should be construed as an action in which recovery is sought for the overpayment of taxes for the years 1926 to 1928 by credit, and urges that, by reason of the fact that no claim for refund has been filed for such years, the action should be dismissed. If the action must be construed as one seeking to recover the overpayment by credit on the taxes for these years, then admittedly there is no jurisdiction because the taxpayer did not file a claim for refund for such years. The complaint does set forth in considerable detail the various incidents that occurred prior to the closing agreement, and also makes reference to the directions for the application of the overpayment. It may be that some of the recitals should be disregarded as mere surplusage, but a reasonable construction of the bill of complaint amply warrants the view that it states a cause of action for the recovery of the 1922 to 1925 overpay-
141 ment.

If, therefore, the Court has jurisdiction of this action, the next question to be determined is whether or not the plaintiffs have established that there was no deficiency, or a less deficiency for the years 1926 to 1928 than that which was computed by the Commissioner. The question must be determined in light of the facts and circumstances surrounding the interest or penalty item of $790,355.20, which the taxpayer was required to pay by reason of the underpayment of the taxes for the years 1917 to 1920, inclusive. It appears that there was litigation between the taxpayer and the Government regarding the amount of the tax due for these years. The Commissioner had assessed additional taxes for the year 1917 on the consolidated income of the Paper Company and its affiliates. It appears that $759,838.91 was assessed as additional taxes for the year 1917, and $884,665.66 as additional taxes for the year 1918. Claims for abatement were rejected

by the Commissioner, and later the Commissioner notified the Paper Company and its affiliates of his determination of deficiencies of $613,248.82 and $1,403,435.47 in taxes upon the consolidated income of the Paper Company and its affiliates for the years 1919 and 1920, respectively. On February 21, 1925, the Paper Company and its affiliates filed petitions with the United States Board of Tax Appeals for redetermination of the additional taxes assessed for 1917 and 1918, and on March 19, 1925, it filed petitions with the Board for re-
142 determination of the deficiencies determined for the years 1919 and 1920. While these proceedings were pending, conferences were held between the taxpayer and the Commissioner, and on February 25, 1926, a stipulation was entered into wherein the deficiencies for the taxable years 1917 to 1920, inclusive, were determined and agreed upon.

The Revenue Act of 1918 provided that where understatement of the amount of taxable income was due to negligence, the recovery should be the principal amount with five per cent of the total amount of the deficiency, plus interest at the rate of one per cent per month on the amount of the deficiency. This law was applicable to the years in question, except 1917. Pursuant to the stipulations, separate orders were entered determining the amount of taxes for the years 1917 and 1918, and a third order covered the years 1919 and 1920. These orders were made by the Board in pursuance of the stipulation that was entered into by the Commissioner and the taxpayer. The underpayment for the year 1917 was determined to be $489,533.40; 1918, $351,943.48; 1919, $491,360.53; and 1920, $920,772.85. In addition to the principal amounts, which were compromised by the parties, the item of penalty or interest was also compromised. Instead of computing the penalty at five per cent on the deficiency, with interest at the rate of one per cent per month, the amount was com-
143 puted at the rate of six per cent per annum for all the years, including 1917. For that year the so-called penalty was computed to be $227,633.03; for the year 1918, $139,897.55; for the year 1919, $165,834.17; and for the year 1920, $255,514.46; totalling $788,879.21. It also appears that the Commissioner added two items of interest, to-wit, $807.71 for the year 1919, and $1,513.59 for the year 1920, totalling $2,321.30. These items apparently were computed under Section 283 (d) of the Revenue Act of 1926 as further interest. The taxpayer paid to the Collector on March 22, 1926, the sum of $3,044,810.77, which is the total of the deficiency for the years mentioned, including the penalty interest amounts, and $2,321.30, the additional interest added by the Commissioner.

The taxpayer endeavored to deduct the so-called penalty and interest from the 1926 consolidated tax return as a deductible item. The Commissioner refused to allow this deduction, contending that it was exclusively a penalty and that penalties were not deductible as expenses in the computation of one's income tax return. Accordingly, the Commissioner disallowed not only the sum of $788,879.21, but also the sum of $1,475.99 of the interest item heretofore referred to as the additional interest of $2,321.30, so the total disallowance was the sum of $790,355.20. It is this item that the parties referred to in their closing agreement in 1933; that is, everything was determined for all of the past years, except
144 the deductibility of the so-called penalty or interest item, and, as before stated, if the Court has jurisdiction, the deductibility of this item constitutes the gist of the lawsuit. It may be noted that after the payment of this tax in the amount of $3,044,810.77, the company sought to set aside this stipulation of settlement and repudiated the validity thereof. Its petition, however, was denied. See, Backus, et al. vs. United States, (Ct. Cl.) 59 F. (2d) 242.

It is significant to note that, in the settlement agreement between the Commissioner and the taxpayer when the 1917 to 1920 taxes were compromised, it was specifically stated that the underpayment for those years was due to negligence on the part of the taxpayer, but without intent to defraud. It may further be observed that this item was referred to in the Board's order on the stipulation as a penalty, but such characterization was undoubtedly taken from the stipulation itself wherein the parties used the same term. But the nature of this item was not before the Board for determination, and when the petition was made to the Court of Claims to set aside the settlement, the question as to whether or not this addition was penalty or interest was not before that court. Consequently, any reference that may have been made either in the Board's order or in the decision of the Court of Claims with reference to the character of the six
145 per cent per annum addition, is not controlling, nor is it of any probative value in the determination of that issue herein. In the computation made by the parties, Exhibit G, attached to the stipulation herein, on the basis of which the Board's orders were entered, the sheet relating to the six per cent per annum is entitled in part "Penalty Interest on Tax Deficiency," below which appears a sub-heading "Date from which interest runs and amount of principal." It has been recognized that the addition of five per cent to the amount of the deficiency is a penalty, but the imposition of the one per cent per month has been held to be

true interest. Citing U. S. vs. Childs, 266 U. S. 304; U. S. vs. Guest, 143 F. 456; Carnill vs. Lederer, 24 F. (2d) 447; In re Simon, 80 F. (2d) 81.

The Solicitor of Internal Revenue has clearly indicated his views as to interest on underpayments in the published rulings of the department. In O. 922, 2 Cumulative Bulletin, 227, this opinion appears:

"Interest paid under the provisions of Section 250 is interest within the meaning of Sections 214 (a) 2 and 234 (a) 2, notwithstanding that it is added to the amount of the tax. Had it been intended that interest paid or accrued on income tax should be excluded from deductions, such exception would have been set forth specifically in Section 214 (a) 2 and 234 (a) 2, as was done in the case of interest on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after Sept. 24, 1917), the interest upon which is wholly exempt from taxation under the income tax * * *. It is held, therefore, that interest paid or accrued under the provisions of Section 250
146 Revenue Act of 1918 is deductible under the provisions of Section 214 (a) 2 or Section 234 (a) 2 in computing net income."

The section referred to in that opinion, to wit, Section 234 (a) 2, Revenue Act of 1926, permits the deduction of "all interest paid or accrued within the taxable year on its indebtedness" in computing the net income tax of a corporation. It would seem uncontrovertible that, if the parties in their stipulation had made their computation as interest on the basis of one per cent a month on the deficiency, such amount would be deductible as "interest paid or accrued," and, clearly, if the parties had computed only six per cent per annum on the deficiency as interest, there would not be much question as to the deductibility of such sum. The difficulty arises, if any exists, by reason of the apparent compromise of the penalty provision of five per cent and the one per cent per month interest item, and the characterization of such compromise percentage by the parties as a penalty, and in some instances as interest. The term or terms used by the parties in the stipulation, however, are not controlling, and we are not fully informed as to the details of the negotiations, the factors that prompted the wording of the stipulation, or the reasons for the acquiescence on the part of the Government in the marked reduction of the interest and penalty permitted by the statute. It may be assumed that a taxpayer is generally more concerned in the amount of interest and penalty than the terms that may be used to characterize the retri-

bution that it must pay for its negligence. The five per
147 cent penalty prescribed by the statute is generally not so onerous a burden as the more euphemistic provision of "interest" which is computed at the high rate of one per cent a month. It may be doubted that this interest provision is actually compensatory interest. The stipulation of the parties, therefore, and the language used therein, while not necessarily controlling as to the exact nature of the six per cent per annum addition, might incline one to the opinion that, by the use of the term "penalty", the parties intentionally designated it as such. On the other hand, the manner in which it was computed, the fact that it was less than the statutory interest of one per cent a month, and the further fact that it was computed on the 1917 deficiency, to which the statute in question did not apply, would more convincingly sustain the view that the parties concluded that, by reason of all the facts and circumstances, a strict application of the statute with reference to penalty and interest was not justified, and that a six per cent addition to the agreed deficiency should constitute the taxpayer's fair share of the penalty and interest items. In that the statute only called for a flat five per cent penalty computed on the deficiency, where negligence and not fraud is involved, it would obviously be unfair to determine that the entire so-called penalty interest of six per cent as computed herein, should be deemed a penalty, as dis-
tinguished from the interest, or as distinguished from
148 a sum representing both penalty and interest. The entire picture strongly indicates a compromise of both penalty and interest, rather than an arbitrary penalty of six per cent per annum, which was not directed or authorized by the statute. It would seem that the parties lumped penalties and interest into one item in order to arrive at an agreement, and the exact proportion thereof that should be interest, as distinguished from penalty, was not determined.

However, the Government strenuously urges that the entire sum of $790,355.20 should be considered as penalty, and contends that as such it is not deductible. In support of its position it relies upon the cases of Great Northern Railway Co. vs. Commissioner, 40 F. (2d) 372; Burroughs Building Material Co. vs. Commissioner, 47 F. (2d) 178; Chicago Rock Island and Pacific Railway Co. vs. Commissioner, 47 F. (2d) 990. But a reading of these cases does not justify the view that all penalties are non-deductible "as ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business." The cases cited deal primarily with penalties sought to be deducted which consisted of fines paid for violation of criminal statutes. These

courts incline to the opinion that the fines being of this nature, no deduction should be allowed for the reason that such a holding would be contrary to public policy. It was
149 reasoned that it would hardly be consonant with public policy to recognize such expense as ordinary and necessary incidents of one's business. The penalties, however, provided by the Internal Revenue laws for failure to pay one's tax when it is due may arise when the taxpayer, by reason of want of funds, for instance, is only a few days late with the payment. Certainly, one cannot say that, merely because a penalty has been imposed under the provisions referred to herein, the recognition of such penalties as deductible items in computing one's income tax would in any way violate public policy. It is difficult to discern any close analogy between negligence in the computation of one's income tax and the violation of the penal statutes of the state or nation. It is common knowledge that error in the computation of taxes occurs with such frequency that few business concerns can be assured that their tax returns are free from error. Mistakes of law or fact are not unusual in making up an income tax statement, especially where a consolidated return is made involving a number of affiliated companies. Certainly, negligent computation of one's taxes is not extraordinary. Generally, it is recognized by the cases that expense arising on account of negligence is a deductible item, in that it fairly arises as an ordinary and necessary expense of transacting one's business. An agent may be negligent in the operation of an automobile. Compensatory dam-
150 ages may result. Such expense is deductible in the computation of one's income tax. Anderson vs. Commissioner, 81 F. (2d) 457. The services of an auditor in computing one's income tax is an ordinary and necessary expense. Why, then, should not the proximate result of the errors and omissions of such auditor be deemed an ordinary and necessary expense within the statute. In the instant case, it appears that in the conference of settlement there arose differences of opinion as to more than three hundred items. No connivance is charged on the part of any official or employee of the taxpayer. It is conceded that in making the returns the taxpayer acted in good faith. That there were many complex and intricate questions of income tax law is evident. The fact that consolidated returns were made with a number of affiliated companies enhanced the probability of error. It may be true that no hard and fast rule can be enunciated that will apply to every situation where deductibility of a so-called penalty is concerned. There may be penalties which cannot fairly be characterized as "necessary and ordinary expense," while under different circumstances the penalty

will permit such characterization. There is no showing herein that the errors and mistakes which give rise to this large deficiency arose in any other way than that which is the common experience of many large concerns. The mere fact that the deficiency represents a large sum should not, in
151 and of itself, justify the conclusion that the negligence involved was of any different character than that which usually arises whenever an underpayment occurs. The Commissioner did not insist upon the complete retribution which the statute provides in case of negligence, and it is fair to assume that the Government at that time recognized the underpayment as an ordinary and usual misunderstanding, which so frequently arises in tax matters.

As indicative of the former view of the Department, it may be noted that in the bulletin O. 926, 1 Cumulative Bulletin 231, it was ruled that penalties imposed for negligence or delinquency in making returns of income tax may be ordinary and necessary expense legally deductible from gross income. This opinion states (p. 242):

"The question whether penalties of the character described are legal deductions from gross income is one which must be determined on the facts in a given case. These penalties may be an incident to the conduct of a business. Where by reason of the negligence of some clerk or officer of a corporation a penalty is incurred and paid, the penalty is an ordinary and necessary business expense and may legally be deducted from gross income. The same may also be true of the penalty imposed for delinquency in the filing of an individual return. Additions to tax for fraudulent returns do not constitute necessary business expenses. An individual who himself is guilty of making a fraudulent return should not be allowed to deduct the penalty which he is required to pay for making such a return."

The ruling, however, was revoked in G. C. M. 11358, XII-1 Cumulative Bulletin 29, on the theory that it was in conflict with the views set forth in Great Northern Railway
152 Co. vs. Commissioner, supra, Burroughs Building Material Co. vs. Commissioner, supra, and Chicago Rock Island & Pacific Railway Co. vs. Commissioner, supra, but, as before stated, these cases all deal with violations of penal statutes, and penalties for negligence in computing one's income tax do not come within the principles laid down in the cases referred to, nor within the reasons therefor. In commenting on these cases relied upon by the Government for the revocation of its ruling, the court in Helvering, Commissioner vs. Hampton, 79 F. (2d) 358, 359, stated:

"In all of the above tax cases the allowance of the claimed deduction is refused because it consists of a fine for violating governmental statutes or regulations or legal expenditures in defense of prosecutions for such offenses. The basis of these decisions is that the taxpayer, in offending the state or federal government, is engaged in a transaction which governmental policy forbids being considered as a part of the business. There is no analogy between payment of a fine for a public offense and the restitution by a real estate dealer of the gains made in a prior tax year by his tortious conduct in a private transaction in the course of his business."

However, it is not necessary to lay down any hard and fast rule herein which should govern the deductibility of income tax penalties that may be assessed under the statute. Presumably, each case should be determined in light of its own peculiar facts and circumstances. The record herein does not furnish any affirmative showing as to the precise manner in which the underpayment arose, nor are the details of the Paper Company's negligence made clear. But it must
153 be conceded that if the six per cent item is to be construed as true interest, rather than penalty, it is obviously deductible under the Solicitor General's ruling, and the plain intendment of the statute. If it is penalty and interest combined, the total sum being far less than the interest permitted by the statute, and it being computed as interest, that is, at the rate of six per cent per annum, the Government should not complain if the taxpayer should have the benefit of any doubt that may exist, and permit the taxpayer to deduct the entire sum as fairly coming within the purview of the statute pertaining to interest, and/or as an ordinary and necessary expense incurred in carrying on the business. The generally accepted principle which recognizes the necessity of resolving doubts against the Government and in favor of the taxpayer in construing taxing acts, is salutary and may well be applied to the instant situation. In any event, the Government is not in a position to contend that the entire sum of $790,355.20 is non-deductible. It must be conceded that of the sum of $790,355.20, the sum of $1,475.99 is true interest and clearly deductible. As stated before, there is no possible justification for the characterization of the entire six per cent as penalty. If any part is to be considered as penalty, it should be limited to the portion thereof that is equal to five per cent of the admitted deficiency. The balance should be considered as interest. It may be considered equitable to settle the dispute in
154 this manner; that is, limit the deduction to the difference between five per cent of the underpayment and

the total penalty interest charge. However, such a disposition would be based upon an arbitrary computation, and there is no showing that adequately indicates what part, if any, of the addition to the underpayment was intended to represent the five per cent penalty. Furthermore, such a determination would recognize an intent of the parties to assess a penalty on the 1917 deficiency in absence of any statute authorizing such exaction. Where the Government has consented to a computation of an interest penalty charge on an underpayment which is less than the amount of interest that might be demanded under the statute, and which computation does not purport to separate the interest and penalty items, in absence of bad faith or fraud, and where it is conceded that the under payment arose by reason of negligence, it cannot be contrary or repugnant to public policy if the entire sum is characterized as a deductible item for income tax purposes.

The remaining question to be determined pertains to the application of some $30,810.46 interest on the overpayment for the years 1922 to 1925 to the withholding tax claimed to be due from the Paper Company on account of interest credits accruing on its books during the year 1921 and paid in 1927 to the Fort Frances Company, a Canadian corporation. That is, the withholding tax was assessed against the Paper Company for the year 1921, although no moneys were paid
155 to the Fort Frances Company until 1927. It is conceded that the agreement for the purchase of the paper from the Fort Frances Company was consummated in Canada, and was wholly performed outside of the United States. The paper was delivered in Canada at the mill, and all freight charges and transportation expense from the mill to the consumers were paid by the Paper Company. In fact, every branch of the transaction was completed within the confines of Canada. The interest accruals on these balances due the Fort Frances Company were entered on the books of the taxpayer in its Minneapolis office, but the 1921 interest was not entered until 1927, during which year it was paid to the Canadian corporation. The Government contends that in in paying the interest to a foreign corporation, the Paper Company should have deducted the statutory tax of thirteen and one-half per cent, and it is to this withholding tax alleged to be due from it in the year 1921 that a portion of the interest on the overpayment of the taxes in 1922 to 1925 was applied. Among the reasons asserted by the plaintiffs why the Government erred in crediting such interest overpayments upon the withholding tax for the year 1921 are the following:

(1) That during the years 1921 to 1927, inclusive, the Fort Frances Company had an office in the United States, and hence the withholding tax statute was not applicable to it.

(2) That the interest entered for the year 1921 and paid in 1927 to the Canadian Company did not constitute income derived from a source within the United States.

(3) That the withholding tax is barred by the statute of limitations.

156 (4) That the taxpayer was under no legal liability to withhold any tax for the year 1921 because no sums were paid to the Fort Frances Company in that year; that there can be no withholding tax until the moneys were actually paid, which did not occur until 1927; and that the crediting of the interest on overpayments upon the alleged 1921 withholding tax was without legal justification.

The statute upon which the Government relies reads in part as follows:

Revenue Act of 1926, 44 Stat. 9, Approved Feb. 26, 1926, Section 221 (a):

"All persons • • • having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein) • • • and income, of any non-resident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein, • • • shall • • • deduct and withhold from such annual or periodic gains, profits, and income, a tax equal to five per centum thereof; • • •."

Section 237. "In the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in Section 221, a tax equal to twelve and one-half per centum thereof in respect of all payments of income made before the enactment of this Act, and equal to thirteen and one-half per centum thereof in respect to all payments of income made after the enactment of this Act, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section; • • •."

It is admitted that during the years in question, Fort Frances Company had an office in the City of Minneapolis. Its books and records were here, including the ledgers,
157 cash books, vouchers, voucher register, journals, checks, receipts, etc., and it occupied space in the general office of the Paper Company. It did not, however, pay any rent directly to the landlord, but was charged a proportional rental by the Paper Company, to which it paid its share of the rent. It appears that during this period some six to eight persons were employed in the Minneapolis office by the Fort Frances Company, and two or three of these persons were bookkeepers devoting all of their time to the matters of the Canadian Company. During these years the general control and supervision of the manufacturing operations of the company have been exercised in its Minneapolis office. Further, it appears that all sales, all receipts, and all disbursements are recorded in the books that were kept here, and since 1923 on the company's printed stationery, "Minneapolis" has been given as its address. In this city it sent and received its correspondence, including official notices received from, and correspondence with, representatives of the dominion and local governments in Canada. The company's Canadian income tax returns have been prepared in the Minneapolis office, and were checked here by the Canadian tax officials. It further appears that the officers of the Fort Frances Company resided in Minneapolis and made their headquarters in the Minneapolis office. All corporate
158 and directors' meetings were likewise held in the Minneapolis office. The fact that the office was located in the same general quarters which housed the parent company should not militate against the taxpayer's contention that the Canadian company had a bona fide office in the City of Minneapolis. During the latter portion of this period, the name of the company not only appeared upon the main entrance to the offices, but its name and office address were listed in the Minneapolis City Directory.

The Government urges that in order to come within the exceptions of the statute, it must appear that not only does the foreign corporation have an office or place of business in the United States, but that it is engaged in trade or business in this country. It seeks to interpret the language of the statute as if it were written "engaged in business in the United States and having an office or place of business therein." It ignores the word "not" and omits the same from the sentence, thus converting the negative phrase of the statute into affirmative language, and yet it retains the conjunction "and". In other words, the Government argues

that the withholding tax applies unless the foreign corporation not only was doing business in the United States, but also had an office or place of business therein.

The statute does not enlighten us as to the legislative intent, and, under such circumstances, it is generally
159 recognized that the popular and common understanding of the phrases used is to be considered, and in applying the ordinary and rational construction to the language of the statute, it would appear that Congress intended that there should be no obligation to withhold the tax if the foreign corporation was engaged in trade or business within the United States or if it had an office or place of business therein. It is conceded that the Fort Frances Company was not engaged in trade or business in the United States within the meaning of such terms, but it is not seriously contended that it did not have an office or place of business therein. It is worthy of note that the position of the taxpayer herein has heretofore received the approval of the Treasury Department in its interpretation of the language in question. In the regulations issued under the Revenue Act of 1918 (Regulation 45, Article 363) it was stated:

"The income of * * * resident foreign corporations is free from a withholding tax."

In Section 1509 of the same regulations, the following explanation of the meaning of the phrase "resident foreign corporations" appears:

"A foreign corporation engaged in trade or business within the United States or having an office or place of business therein is sometimes referred to in the regulations as a resident foreign corporation, and a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein as a non-resident foreign corporation."

It was further provided in Article 601 of Regulation
160 45 that withholding is required "with respect to payments to foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein." It does not appear that the Government has departed from this construction in any subsequent regulation. It may be argued that Congress intended to require withholding of any moneys paid to a foreign corporation in all cases where the tax applies, unless the foreign corporation was doing business in the United States and had an office therein, in order to afford the Government some security in the collection of the tax directly from such foreign

corporation. Assuming that such construction would provide more assurance that the foreign corporation would, under the circumstances, have property in the United States from which the tax could be collected, which conclusion does not necessarily follow, there is no way in which the Court could adopt such construction without doing violence to the ordinary, common and popular interpretation of the language used. It is not disputed that the Paper Company acted in good faith in making the payment to the Fort Frances Company, and there is no contention that there was any fraudulent intent on its part. Giving effect, therefore, to the plain intendment of the language used, it would seem that the Paper Company construed this statute as any reasonable, prudent person would have interpreted it under the same circumstances.

161 This same statute has been repeatedly reenacted by Congress over a period of years, and the identical language has been retained. The Treasury Department itself has continuously adhered to the construction above referred to. One cannot say that the statute is obscure or ambiguous, and, under these circumstances, the Court should not depart from a literal construction thereof.

But even though it is held that the position now urged by the Government with respect to the construction of the statute should be upheld, it is the Court's opinion that the interest paid to the Fort Frances Company was not interest from sources within the United States. The right to the payment for the products sold arose in Canada and never had a situs in the United States. It must be remembered that we are considering a single transaction. The right to interest arose by reason of the failure of the Paper Company to pay the principal when it was due. The entry of interest in the books was not a separate transaction, but merely a record of that which necessarily accrued from the sale in Canada. The entry of interest on the books of the Paper Company did not create, nor did it give rise to the right of interest. The interest was merely an incident to a transaction that arose and which was consummated wholly outside of the United States. Assume, for instance, that an American concern borrows money in Canada from a Canadian institution at an agreed rate of interest, and that the entire transaction was consummated in Canada. Was it the intent of Congress that

162 interest paid by the American concern from its offices in this country on such a transaction should be subject to the thirteen and one-half per cent tax. It seems reasonably clear that the "interest-bearing obligations" referred to in Section 217 (a) (1) are such as have a source within the United States. The interest due on the balances that re-

mained from time to time on the purchase price of paper products became an integral part of that transaction, and it cannot be said that the sale was consummated wholly without the United States, but that the interest on the balances due arose from sources within the United States. The section of the statute read in conjunction and in light of the other provisions of the statute, does not support the Government's position, and the Court is of the opinion that on the admitted facts there was no obligation on the part of the taxpayer to withhold any tax from the moneys so paid.

In support of its position, defendant relies principally on Eitingon vs. Commissioner, 27 B. T. A. 1341; Helvering vs. Stockholms Enskilda Bank, 293 U. S. 84; and British-American Tobacco Co. vs. Helvering, 293 U. S. 95. A reading of the Eitingon Case does not substantiate defendant's construction. It will be observed that the decision specifically makes reference to the fact that "there is no showing that the transaction out of which the obligation for interest arose was consummated outside of the United States." Neither
Helvering vs. Stockholms Enskilda Bank, supra, nor
163 British-American Tobacco Co. vs. Helvering, supra, involved the question as to whether the interest under consideration was derived from sources without or within the United States. The principal question which concerned the court was whether the tax refund due from the Government was an interest-bearing obligation. These cases are authority for the view that the account between the Paper Company and the Canadian company in the instant case is an interest-bearing obligation within the meaning of the statute, but these cases in no way bear on the right of the Government to tax interest paid on such an obligation where it indisputedly appears that the transaction which gave rise to the account was consummated entirely without the United States.

The statute of limitations is asserted as a bar to the right of the Government to recover any withholding tax if the same constitutes a valid claim against the taxpayer under the statute. It appears that on March 15, 1922, the taxpayer filed with the Collector a return of moneys paid to foreign corporations and individuals on Form 1042 for the year 1921, which is the year the interest accrued. The entry and payment, however, were not made until 1927. Manifestly, in the return made on March 15, 1922, no report could have been made, or was made, of any sum paid to the Fort Frances Company because no moneys were paid until some five years later. Whether the filing of the return in the year 1922 on

Form 1042 is sufficient to begin the statute of limita-
164 tions, the Court does not now determine, because it must be apparent that there was no obligation to withhold any tax until the money was paid. No money was paid in 1921, and hence no withholding tax could be assessed against the debtor for that year. It is evident, therefore, that if for no other reason the action of the Commissioner in attempting to credit a portion of the overpayment interest upon an alleged withholding tax for the year 1921 was without justification and without any basis under existing statutes.

The determination of the consolidated net income for the years 1926 and 1928 has been determined by the Commissioner. To give effect to the allowance of the deduction of the sum of $790,355.20 and the rule that should be followed in making such deduction, the Court has adopted the principles enunciated in the case of Swift & Co. vs. United States, 38 F. (2d) 365. The computation follows:

165 Consolidated Net Income for Year 1926 as Determined by Commissioner of Internal Revenue and as Adjusted to Give Effect to Allowance of Deduction of $790,355.20

Companies Sustaining Net Losses:

		Percentage to Total
Minnesota and Ontario Paper Company		
Net Income Determined by Commissioner	$462,609.08	
Less further deduction allowable	790,355.20	
Balance Net Loss of M & O Paper Co.	$327,746.12	56.20837
International Lumber Company	163,108.72	27.97161
Minnesota, Dakota & Western Ry. Co.	16,874.38	2.89379
Rainy River Improvement Company	19,860.81	3.40694
Minnesota Forest Products Company	55,532.44	9.52329
Total Net Losses	583,122.47	100.00000
Less Net Income of Falls Lumber & Coal Co.	41,400.37	
Leaving Consolidated Net Loss for 1926 of	$541,722.10	

The net income of Falls Lumber & Coal Company is apportioned to companies sustaining net losses on the basis of the percentages above indicated, as follows:

	Net Loss as Adjusted	Less Portion of Net Income of Falls Lbr. & Coal Co.	Balance to be carried forward to Year 1927
Minnesota and Ontario Paper Company	$327,746.12	$23,269.23	$304,476.89
International Lbr. Co.	163,108.72	11,580.35	151,528.37
Minnesota, Dakota & Western Railway Co.	16,874.38	1,198.03	15,676.35
Rainy River Improvement Co.	19,860.81	1,410.08	18,450.73
Minnesota Forest Products Co.	55,532.44	3,942.68	51,589.76
	$583,122.47	$41,400.37	$541,722.10

The losses shown in the last column as to each company are deductible from the net income in 1927 of the same company, and to the extent that the net income for 1927 is insufficient to absorb such net loss, the excess is carried forward to 1928.

166 Application of Net Loss Sustained in 1926 to Consolidated Net Income in 1927

		Percentage to Total	Less Share of 1927 Losses	Balance Net Income for 1927
Net Income:				
Minn. & Ontario Paper Co.	$678,568.62	95.4307	$403,126.29	$275,442.33
Falls Lumber & Coal Co.	32,490.43	4.5693	19,302.07	13,188.36
Total Net Income	$711,059.05	100.0000	$422,428.36	$288,630.69
Less Net Losses:				
International Lumber Co.	312,502.11			
Minnesota, D. & W. Ry. Co.	36,222.37			
Rainy River Improvement Co.	20,519.49			
Minnesota Forest Products Co.	53,184.39			
	422,428.36			
Consolidated Net Income	$288,630.69			

Consolidated Taxable Net Income and Tax for 1927

Net Income of Paper Company		$275,442.33
Net Loss of Paper Company for 1926	$304,476.89	
Amount of said net loss allowable in 1927		275,442.33
Taxable net income of Paper Company		$ 0.00
Net Income of Falls Lumber and Coal Company		13,188.36
Consolidated taxable net income		$ 13,188.36
Less exemption granted by Section 236 (b) of the Revenue Act of 1926		2,000.00
Consolidated taxable net income subject to tax		$ 11,188.36
Tax thereon at 13½%		1,510.43
Tax paid for 1927		
Tax owing for 1927		0.00
		$ 1,510.43

167 Application of Balance of Net Loss Sustained in 1926 to Consolidated Net Income for Year 1928.

		Percentage to Total	Less Share of 1926 Losses	Balance Net Income for 1928
Net Income:				
Minnesota & Ontario Paper Co.	$314,796.00	81.63963	$162,052.70	$152,743.30
Minnesota, Dakota & Western Ry. Co.	48,828.43	12.66326	25,136.21	23,692.22
Falls Lumber & Coal Co.	21,967.71	5.69714	11,308.68	10,659.03
Total Net Income	$385,592.14	100.00000	$198,497.59	$187,094.55
Less Net Losses:				
Int. Lbr. Co.	130,016.31			
Rainy River Improvement Co.	14,719.76			
Minnesota Forest Products Co.	53,761.52			
	198,497.59			
Consolidated Net Income	$187,094.55			

Consolidated Taxable Net Income and Tax 1928

Net Income of Paper Company		$152,743.30
Less net loss of Paper Company for 1926 not absorbed in 1927		29,034.56
Taxable Net Income of Paper Company		$123,708.74
Net Income of Minnesota, Dakota & Western Ry. Co.	$23,692.22	
Less net loss of said company for 1926 not absorbed in 1927	15,676.35	
Taxable Net Income of said company		8,015.87
Taxable Net Income of Falls Lumber and Coal Company		10,659.03
Consolidated taxable Net Income		$142,383.64
Tax thereon at 12%		$ 17,086.04
Less tax paid		7,758.58
Tax owing for 1928		$ 9,327.46

168 Let this memorandum be made a part of the foregoing findings of fact and conclusions of law.

GUNNAR H. NORDBYE,
United States District Judge.

(Endorsed): Filed February 25, 1937. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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169 (Judgment, April 9, 1937.)

In the District Court of the United States in and for the District of Minnesota—Fourth Division.

Term Minutes.

March Term, A. D. 1937.

April 9, 1937.

Friday morning,

Court opened pursuant to adjournment,

Present: Honorable Gunnar H. Nordbye, Judge.

Margaret L. Mullane, Clerk.
By Thomas H. Howard, Chief Deputy.

(Before Nordbye, J.)

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. Law.
United States of America, Defendant.

This cause having come on for trial by the Court without a jury on the 4th day of May, 1936, trial by jury having been duly waived, and the Court having heard the evidence and the arguments of counsel and considered the same, and having made and on the 25th day of February, 1937, filed its findings of fact and conclusions of law, and having ordered judgment for the plaintiffs;

Now, therefore, pursuant to said findings of fact and conclusions of law and order for judgment, and on motion of Messrs. J. B. Faegre and Hayner N. Larson, attorneys for the plaintiffs:

It Is Considered Ordered And Adjudged: that said plaintiffs, C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor do have and recover of and from

said defendant, United States of America, the sum of One Hundred Six Thousand Eight Hundred Forty-eight and 42/100 Dollars ($106,848.42), together with interest as follows:

On $14,070.24 from and after October 31, 1931,
On $ 5,906.95 from and after October 31, 1931,
On $16,704.68 from and after December 15, 1923,
On $ 7,186.17 from and after July 10, 1933,
On $ 6,172.50 from and after September 14, 1925,
On $17,731.73 from and after December 14, 1925,
On $ 7,800.00 from and after March 13, 1926;

said interest to run and accrue until a date not more than thirty days prior to the date of payment to the plaintiffs as provided by Section 614 (a) of the Revenue Act of 1928, without costs and disbursements which have been expressly waived by said plaintiffs.

Further Ordered: That all further proceedings herein, be and they are hereby stayed for a period of forty-two (42) days from and after this date, for such further proceedings as the Defendant may be advised to take under the provisions of Rule XXI of this Court.

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170 Bill of Exceptions.

In the District Court of the United States in and for the District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer as Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. Law.
United States of America, Defendant.

Be it remembered that on the 4th day of May, 1936, at ten o'clock A. M., the above-entitled case came on for trial before the Honorable Gunnar H. Nordbye, one of the judges of the above-named court, at the Federal Building, in the City of Minneapolis, Minnesota.

Messrs. Cobb, Hoke, Benson, Krause & Faegre, by Messrs. J. B. Faegre and Hayner N. Larson, appeared for the plaintiffs; Messrs. George F. Sullivan, United States Attorney, Linus J. Hammond, Assistant United States Attorney, and Messrs. J. E. Garvey, Special Assistant to the Attorney General, and Arthur Carnduff, Special Attorney for the Bureau of Internal Revenue, appeared for the defendant.

The above case coming on for hearing, the following proceedings were had.

Mr. Larson: At the outset, we would like, in behalf of the plaintiff, to ask leave of the Court to amend the petition as respects the last sentence of paragraph B of Section 16 and we have prepared a formal motion to that effect to-
171 gether with a formal order. I may say that in the following case, the claim in Consolidated Proceedings 11640, the answer of the trustees makes the allegation which is sought to be incorporated in the petition in Law 3391.

Mr. Garvey: If it please the Court, and with the permission of the Court, the defendant at this time desires to have permission to make and file a motion to dismiss.

The Court: Well, is this directed now to this motion for leave to amend?

Mr. Garvey: I have in mind that it is directed to the whole proceedings before the Court, before any action is taken by the Court in the case, on the ground that the Court is without jurisdiction to at this time inquire into anything but the fact of its jurisdiction to entertain this case.

The Court: Very well. Does that raise substantially the same questions that I have already passed upon?

Mr. Garvey: We have raised also the question of the statute of limitations with reference to the claimed overpayment of taxes for 1922 to 1925 inclusive.

The Court: Do I understand that you have no particular objection to the offer of this amendment, except that you do so without waiving your motion that you now desire to make?

Mr. Garvey: My attention has not been directed to the motion until just this moment, and my reaction to this now is that it is an attempt to supply a statement of a cause of action, not heretofore, in the pleadings; no cause of action was stated, and it is now attempted to be covered by this motion to amend.

The Court: Well, do you want to be heard now upon the motion that the plaintiff makes with reference to amendment of its bill?

Mr. Garvey: Well, I have in mind, your Honor—

The Court: I would like to take up one thing at a time. Is there any reason why we cannot hear now and determine the propriety of allowing this amendment?

172 Mr. Garvey: I have in mind this thought, your Honor, that the defendant having raised the question of jurisdiction, that that would precede the consideration of anything else in the case.

The Court: All right, I will hear you.

Mr. Garvey: May the defendant have your permission to file the motion at this time.

The Court: Very well.

Thereupon, the defendant filed in Court its Motion to Dismiss, which, omitting caption, was in words and figures as follows:

173 Motion to Dismiss.

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota & Ontario Paper Company, a Corporation, Plaintiffs,
No. 3,391. vs. At Law.
United States of America, Defendant.

For the reason that this Court does not have and should not take jurisdiction thereof, the defendant, the United States, makes and files this motion to dismiss the following purported causes of action, purported to be alleged in plaintiff's petition and on the following grounds:

(1) The Purported Cause Of Action For The Recovery Of Claimed Overpayment Of Income Taxes For The Years 1922 To 1925, Inclusive.

The allegations of the petition show that the amount of said claimed overpayments were repaid to the plaintiffs, prior to the commencement of this action, by the application of said claimed overpayments on tax assessments outstanding against the taxpayer for other tax years; the allegations of the petition further show that suit for the recovery of claimed overpayments of income taxes for the said years 1922 to 1925 inclusive, was barred prior to the commencement of this action; said allegations further show that at the time of the commencement of this action, suit could not have been maintained, for the recovery of the said claimed overpayments, against the Collector, if he were in office; said allegations further show that the claimed overpayment are in excess of $10,000 for each of said years and that this court does not have jurisdiction of said purported cause of action.

174 (2) The Purported Cause of Action for the Recovery, as Interest or as a Claimed Overpayment of Withholding Tax, of the Amount of Interest Allowed by the Commissioner on Overpayments of Income Taxes for the Years 1922 to 1925 Inclusive and Credited on Withholding Tax Assessed for the Year 1921.

The allegations of the petition show that the 1921 withholding tax assessment was collected by the crediting thereon of interest allowed by the Commissioner on allowed overpayments of income taxes for the years 1922 to 1925, inclusive; the allegations aforesaid do not show that any claim for refund was filed with the Commissioner for a refund of the amount so collected on the withholding tax assessment aforesaid; the allegations further show that at the time of the commencement of this action a suit could not have been maintained against the Collector, if he were in office, because a Collector is not liable to suit for interest on claimed overpayments of tax and because, further, no claim for refund for claimed overpayment of said withholding tax was filed with the Commissioner.

(3) The Purported Cause of Action for the Recovery of Claimed Overpayment by Credit of Income Taxes Assessed for the Years 1926, 1927 and 1928.

The allegations of the petition that purport to set out said purported cause of action for the recovery of claimed overpayment by credit of income taxes for the years 1926 to 1928, inclusive, do not allege that any claims for refund were filed with the Commissioner for refund of any part of the amounts collected by credit on the assessments for said years; said allegations show that this court does not have jurisdiction of the said purported cause of action for recovery of claimed overpayments, by credit, of taxes for the said years 1926 to 1928, because no claims for refund are alleged to have been filed with the Commissioner for refund, and because, further, a Collector of Internal Revenue is not liable to suit for
175 taxes collected by credit, and the taxes so collected by credit for each of said years is in excess of $10,000.00.

Respectfully submitted,

GEORGE F. SULLIVAN,
United States Attorney.

JOHN E. GARVEY,
Special Assistant to the Attorney General.

176 The Court: I will hear you now.

(Arguments of counsel.)

The Court: Well, it seems to me that you are urging substantially the same reasons and grounds that were submitted to the Court at the time that the demurrer was considered by the Court, and the Court having overruled the demurrer, the Court will deny the motion at this time with the understanding that of course the question of jurisdiction is always before the Court, and when the matter is finally submitted, if counsel desires to again urge the lack of jurisdiction, I think it is a matter that the Court will ultimately have to pass upon.

Mr. Garvey: At this time may we have an exception to the ruling of the Court?

The Court: Yes, it may be noted, and the record may indicate that counsel may have an exception to all adverse rulings that may be made, without specifically taking an exception in the record, and that exception may be noted with the same force and effect as if it were specifically taken after each and every adverse ruling. I will allow the amendment to the complaint.

By such amendment the last sentence of paragraph b of Section XVI of the plaintiffs' petition was amended so as to read as follows:

"At no time has the Fort Frances Company maintained a sales representative in the United States, but during all the times herein mentioned it has maintained and still does maintain an office in the United States."

Mr. Garvey: You have allowed the motion to amend the complaint, and an exception to the allowance of the amendment to the pleading may be noted, your Honor?

The Court: Yes.

Mr. Larson: If the Court please, most of the facts in this case have been incorporated in a written stipulation signed by the counsel for the respective parties under date of April 30, 1936, and we will file that stipulation with the Court.

The Court: Very well. (Paper handed to the Court by Mr. Larson.)

177 Mr. Larson: I call the Court's particular attention to the opening paragraph of the stipulation which reads as follows:

(First paragraph of stipulation read to the Court by Mr. Larson.)

Mr. Garvey: If the Court please, assuming that the stipulation has now been offered but not as yet received in evidence, the defendant at this time objects to the admission of any evidence in this case on the ground that the Court does not have jurisdiction of any purported cause of action set out in the petition, and on the further ground that the petition does not state facts sufficient to constitute a cause of action, and in connection with this objection we desire to have the record show that we are asserting all of the objections that are set forth in the motion to dismiss heretofore filed.

The Court: The Court will overrule the objection and the stipulation may be received in evidence.

The stipulation so received in evidence, omitting caption, was in words and figures as follows:

178 (Stipulation of Facts.)

In the District Court of the United States in and for the District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer as Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. At Law.
United States of America, Defendant.

It is hereby stipulated and agreed that the matters herein set out shall be treated by the Court and the parties as true and established, subject, however, to the reserved right of both parties to object to the same on the ground of immateriality, irrelevancy, or as not within the issues, and subject also to the reserved right of the defendant to object to the jurisdiction of the Court over any and all causes of action purported to be alleged in plaintiffs' complaint and subject also to the reserved right of the defendant to object to the admission of any evidence in the case on the ground that the complaint does not state facts constituting a cause of action; and subject also to the reserved right of both parties to offer testimony or evidence in respect to other or further facts not inconsistent with the matters herein stipulated as true and established:

I.

a. Minnesota and Ontario Paper Company is a corporation organized and existing under the laws of the State of Maine. It is hereinafter referred to as the Paper Company.

b. Fort Frances Pulp and Paper Company, Limited, is a corporation organized and existing under the laws of the

Province of Ontario, Canada. It is hereinafter referred to as the Fort Frances Company.

c. Ontario and Minnesota Power Company, Limited, is a corporation organized and existing under the laws of
179 the Province of Ontario, Canada. It is hereinafter referred to as the Power Company.

II.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer now are and at all times since September 29, 1934, have been, pursuant to an order of this Court that day made and entered under Section 77B of the Bankruptcy Act, the duly appointed, qualified and acting trustees of the estate of the Paper Company, debtor. Between July 11, 1934, and said September 29, 1934, C. T. Jaffray and R. H. M. Robinson, pursuant to an order of this Court made and entered under said Act on July 11, 1934, were the duly appointed, qualified, and acting temporary trustees of the estate of the Paper Company, debtor. From November 30, 1931, until their appointment as such temporary trustees on July 11, 1934, Jaffray and Robinson were the duly appointed, qualified, and acting receivers of the Paper Company.

III.

From 1917 to 1920, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with the following corporations: International Lumber Company, Rainy River Improvement Company, Minnesota, Dakota and Western Railway Company, Falls Lumber and Coal Company, Watrous Island Boom Company, and International Insulation Company. From 1921 to 1925, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with all said named corporations except International Insulation Company. From 1926 to 1928, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with all said named corporations together with Minnesota Forest Products Company, a corporation. The corporations affiliated with the Paper Company are sometimes herein referred to as "affiliates".

180 During each of said three periods the annual earnings or net income of the Paper Company and its affiliates were consolidated for income-tax purposes. All taxes paid on such consolidated earnings or net income have been paid by the Paper Company.

IV.

All income taxes paid by the Paper Company to the United States for the years 1922 to 1925, inclusive, were paid to one Levi M. Willcuts as the duly appointed, qualified, and acting Collector of Internal Revenue for the District of Minnesota. Willcuts was such Collector from June 1, 1921, to July 31, 1933, inclusive. Since the latter date he has not been and is not now in office as Collector of Internal Revenue.

Whenever in this stipulation the word "Collector" is used, reference is made to said Willcuts as Collector of Internal Revenue for the District of Minnesota.

V.

a. On March 14, 1923, the Paper Company filed with the Collector a tentative return of consolidated net income of itself and affiliates for 1922 and at the time of such filing paid to the Collector $17,500 in part payment of the estimated tax. On June 15, 1923, the Paper Company filed with the Collector a completed return of the 1922 consolidated net income of itself and affiliates. Said completed return showed a tax of $66,818.77, which amount, except for the payment of $17,500 already made, was paid to the Collector as follows:

June 15, 1923	$15,909.39
September 15, 1923	16,704.70
December 15, 1923	16,704.68

b. On June 4, 1927, the Paper Company filed with the Collector a claim for refund of the $66,818.77 paid to him as income tax for 1922. On April 30, 1929, a further claim for refund of said tax was filed with the Collector.

181 c. On or about the 30th day of September, 1930, the Paper Company filed in the United States District Court for the District of Minnesota, Third Division, an action in which the Paper Company was plaintiff and the Collector defendant. In said action the Paper Company sought judgment against the Collector for the amount of income taxes claimed to have been overpaid for the year 1922 as aforesaid. A copy of the petition in said action is hereto attached and made a part hereof and marked Exhibit A. The Collector made and filed an answer, a copy of which is hereto attached as Exhibit B and by reference is made a part hereof. Said action was pending at the time of the making of the closing agreement, Exhibit O, hereinafter referred to.

VI.

a. On March 15, 1924, the Paper Company filed with the Collector a tentative return of consolidated net income of

itself and affiliates for 1923 and at the time of such filing paid to the Collector $58,000 in part payment of the estimated tax. On June 14, 1924, the Paper Company filed with the Collector a completed return of the 1923 consolidated net income of itself and affiliates. Said completed return showed a tax of $166,352.88, which amount, except for the payment of $58,000 already made, was paid to the Collector as follows:

June 14, 1924	$25,175.44
September 14, 1924,	41,588.22
December 14, 1924	41,588.22

b. On July 20, 1927, the Paper Company filed with the Collector a claim for refund of $110,241.81 of the income taxes paid to him for 1923. On or about December 10, 1928, a further claim for refund was filed with the Collector wherein the amount of the 1923 income taxes claimed as refundable was reduced to $86,355.86. On April 30, 1929, a second further claim for refund was filed with the Collector wherein refund was again claimed of said $86,355.86.

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VII.

a. On March 14, 1925, the Paper Company filed with the Collector a tentative return of consolidated net income of itself and affiliates for 1924 and at the time of such filing paid to the Collector $15,000 in part payment of the estimated tax. On June 15, 1925, the Paper Company filed with the Collector a completed return of the 1924 consolidated net income of itself and affiliates. Said completed return showed a tax of $70,926.94, which amount, except for the payment of $15,000 already made, was paid to the Collector as follows:

June 15, 1925	$20,463.47
September 14, 1925	17,731.74
December 14, 1925	17,731.73

b. On December 24, 1927, the Paper Company filed with the Collector a claim for refund of $36,904.69 of the income taxes paid to him for 1924. On March 13, 1929, the Paper Company filed with the Collector a further claim for refund wherein the amount of the 1924 taxes claimed as refundable was reduced to $29,882.76. On April 30, 1929, the Paper Company filed with the Collector a second further claim for refund wherein the amount of 1924 taxes claimed as refundable was increased to $49,670.56.

c. On December 29, 1930, the Commissioner mailed to the Paper Company a notice of the determination of a deficiency in income taxes for the year 1924, in accordance with Section 274 of the Revenue Act of 1926. Within sixty days there-

after the Paper Company filed with the Board a petition for redetermination of such deficiency. Said petition was pending before the Board at the time of the making of the closing agreement, Exhibit O, hereinafter referred to.

VIII.

a. On March 13, 1926, the Paper Company filed with the Collector a tentative return of the consolidated net income of itself and affiliates for 1925 and at the time of such filing paid to the Collector $10,000 thereon. On June 1,
183 1926, the Paper Company filed with the Collector a completed return of the 1925 consolidated net income of itself and affiliates. Said completed return showed a tax of $9,365.77, which amount was less than the sum already paid by $624.23, which last amount the Collector refunded to the Paper Company on October 23, 1926.

b. On December 24, 1927, the Paper Company filed with the Collector a claim for refund of $8,515.30 of the income tax paid to him for 1925. On March 13, 1929, the Paper Company filed with the Collector a further claim for refund wherein the amount of 1925 taxes claimed as refundable was reduced to $6,401.49. On April 30, 1929, the Paper Company filed with the Collector a second further claim for refund wherein the amount of 1925 taxes claimed as refundable was further reduced to $3,400.75.

c. On November 7, 1930, the Commissioner mailed to the Paper Company a notice of the determination of a deficiency in income taxes for the year 1925, in accordance with Section 274 of the Revenue Act of 1926. Within sixty days thereafter the Paper Company filed with the Board a petition for redetermination of such deficiency. Said petition was pending before the Board at the time of the making of the closing agreement, Exhibit O, hereinafter referred to.

IX.

a. In February, 1921, and March, 1924, the Commissioner assessed an aggregate amount of $759,838.91 as additional taxes upon the 1917 consolidated income of the Paper Company and its affiliates. In March, 1924, the Commissioner assessed $884,665.66 as additional taxes upon the 1918 consolidated income of the Paper Company and its affiliates. Claims for abatement of $498,111.21 of the 1917 assessment were rejected on February 4, 1925. A claim for abatement of the 1918 assessment was rejected January 23, 1925. On January 23, 1925, the Commissioner notified the Paper
184 Company and its affiliates of his determination of deficiencies of $613,248.82 and $1,403,435.47 in taxes up-

on the consolidated income of the Paper Company and its affiliates for 1919 and 1920 respectively. On February 21, 1925, the Paper Company and its affiliates filed petitions with the Board for redetermination of the said additional taxes assessed for 1917 and 1918. On March 19, 1925, the Paper Company and its affiliates filed petitions with the Board for redetermination of the deficiencies determined for 1919 and 1920.

b. While said proceedings were pending before the Board, the Paper Company and its affiliates held conferences with the Commissioner and other representatives of the Treasury Department for the purpose of ascertaining and agreeing upon the amount of tax owed for each of said years 1917 to 1920, inclusive. As the result of said conferences the Paper Company and the Commissioner entered into a written stipulation dated February 25, 1926. Said stipulation was filed with the Board February 26, 1926. A true copy thereof is hereto attached as Exhibit C and by reference is made a part hereof.

c. By letter dated February 25, 1926, the Commissioner advised the Paper Company as follows:

Confirming the agreement made with the Commissioner of Internal Revenue on February 24, 1926, you are advised that the amount of the penalty to be assessed against you as the result of the negligent understatement of your tax liability for the taxable years 1917, 1918, 1919, and 1920 will be compromised by accepting a sum equal to 6 per cent per annum on the amount of the deficiencies determined and assessed in accordance with the stipulation this date entered into between the taxpayer and the representative of this office, from the date the deficiencies became due and payable to the date of payment.

d. On February 26, 1926, the following further written stipulation was signed and filed with the Board:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by its attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota &
185 Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer", by its counsel, that the taxpayer's deficiency in tax for the taxable years 1917, 1918, 1919, and 1920 shall be determined by the Board of Tax Appeals in accordance with the agreement entered into between the taxpayer and the Commissioner on February 25, 1926, a copy of which is hereto attached, marked "Exhibit A", and made a part of this stipulation.

The Exhibit A attached to said stipulation is the written agreement of February 25, 1926, referred to in subparagraph (b) above.

e. On February 26, 1926, the Board entered the following order in respect of said proceedings then pending before it:

This appeal coming on to be heard on February 26, 1926, the taxpayer being represented by Ralph M. Shaw, Esq., and the Commissioner being represented by E. C. Lake, Esq., and it appearing that the parties have entered into a certain stipulation which was filed on this date, and it appearing that the parties have agreed to compute the tax in accordance with the stipulation aforesaid; Now, therefore, on agreement of counsel for both parties, it is

Ordered, That the tax shall be computed in accordance with the stipulation filed this date and referred to hereinabove. Final determination of the deficiency will be made under rule 50 of the Board's Rules of Practice on consent of the parties or on 10 days' notice by either party to the adverse party.

f. On March 6, 1926, the following further stipulation was filed with the Board in said proceedings:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer", by its counsel, that the amount of the deficiency due from the taxpayer or overassessment in the above-entitled appeals for each of the taxable years 1917, 1918, 1919 and 1920 is as follows:

	Tax	Penalty
1917, overassessment	$270,305.51	$227,633.03
1918, overassessment	532,722.18	139,897.55
1919, deficiency	491,360.53	165,834.19
1920, deficiency	920,772.85	255,514.47

186 The above overassessments for the years 1917 and 1918 arose by reason of the Commissioner's assessing against the Paper Company additional taxes of $759,838.91 for the year 1917 and $884,665.66 for the year 1918. The additional taxes agreed upon as due by the Paper Company for the years 1917 and 1918 were in the respective amounts of $489,533.40 and $351,943.48, which amounts were respectively $270,305.51 and $532,722.18 less than the respective amounts theretofore assessed for said years as set forth in subpara-

graph (a) above. There was no assessment of the amounts designated "Penalty" prior to March 8, 1926.

g. Pursuant to the stipulations filed as noted above, the Board on March 6, 1926, entered three orders determining the amount owing for each year involved. The amount owing for 1917 was covered in one order; the amount owing for 1918 was covered in another order; and the amount owing for each of the years 1919 and 1920 was covered in the third order. True copies of said orders are hereto attached as Exhibit D, Exhibit E, and Exhibit F, respectively, and by reference are made parts hereof. The "other documentary evidence" referred to in said orders is a computation prepared by representatives of the Paper Company and its affiliates and the Commissioner and filed with the Board March 6, 1926; a true copy of said computation is attached as Exhibit G and by reference is made a part hereof. Said computation was made pursuant to and in accordance with the stipulation, Exhibit C, referred to in subparagraph (b) above and the letter of the Commissioner referred to in subparagraph (c) above.

h. Thereafter on March 8, 1926, the Commissioner, in accordance with the Board's orders, Exhibits D, E, and F, assessed on his March, 1926, assessment list the amounts of the deficiencies for 1919 and 1920 and the amounts designated as "penalties" for 1917, 1918, 1919, and 1920, and issued
187 certificates of overassessment of the amounts to be abated for the years 1917 and 1918. On March 12, 1926, the Collector issued notices and made demand for each of the years as follows:

Year	Tax	Amounts called "Penalty" in Board's orders	Interest	Total
1917	$ 489,533.40	$227,633.03		$ 717,166.43
1918	351,943.48	139,897.55		491,841.03
1919	491,360.53	166,834.17	807.71	658,022.41
1920	920,772.85	256,514.46	1,513.89	1,177,800.90
Total	$2,253,610.26	$788,879.21	$2,321.30	$3,044,810.77

The total of the amounts designated as "Penalty" and of the interest is $791,200.51.

On March 22, 1926, the Paper Company paid to the Collector $3,044,810.77, the sum of the foregoing demands.

A true copy of the assessment list is hereto attached as Exhibit H, and by reference is made a part hereof.

i. On April 18, 1928, a suit was instituted in the Court of Claims against the United States for the recovery of income, war-profits, and excess-profits taxes for the years 1917 to 1920, inclusive. The decision of the Court of Claims is reported in 59 Fed. (2d) 242. Reference to said decision is hereby made.

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X.

On June 15, 1927, the Paper Company filed with the Collector its consolidated income tax return for the year 1926 reporting thereon a consolidated net loss and no tax liability. On October 28, 1931, the Commissioner advised the Paper Company that an audit of its return disclosed a tax liability of $41,566.02, which amount, together with interest of $11,539.98, or a total of $53,106.00, was, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed on the October 31, 1931 Assessment List for the District of Minnesota. The Commissioner made a further audit of the Paper Company's return for the year 1926 and as a result thereof issued a certificate of overassessment bearing the number 1316756, a true copy of which is hereto attached as Exhibit I and by reference is made a part hereof. By said certificate $10,222.00 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed for 1926, but outstanding and unpaid as follows: income taxes, $33,565.47; interest thereon to October 31, 1931, $9,318.53; total, $42,884.00.

XI.

On June 15, 1928, the Paper Company filed with the Collector its consolidated income tax return for the year 1927 reporting a consolidated net loss and no tax liability. On the October 31, 1931 Assessment List for the District of Minnesota, the Commissioner, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed a tax for 1927 of $50,010.72, together with interest of $10,893.84, a total of $60,894.56. The Commissioner made a further audit of such return for the year 1927 and as a result thereof issued a certificate of overassessment bearing the number 1316757, a true copy of which is hereto attached as Exhibit J and by reference is made a part hereof. By said certificate $13,449.44 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed

189 for 1927 but outstanding and unpaid as follows: income taxes, $38,965.14; interest thereon to October 31, 1931, $8,479.98; total, $47,445.12.

XII.

a. On May 11, 1929, the Paper Company filed with the Collector its consolidated income tax return for the year 1928 reporting a consolidated net loss and no tax liability. The Commissioner, upon an audit of said return, determined a deficiency in tax for the said year 1928 in the sum of $7,758.58 tax and $518.34 interest thereon, and on April 26, 1930, said amount was by the Commissioner assessed against the Paper Company, and the same was paid to the Collector as set out in subparagraph (b) hereof. On the October 31, 1931 Assessment List for the District of Minnesota, the Commissioner, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed an additional tax for 1928 against the Paper Company in the amount of $42,166.52 and interest thereon of $6,646.71, which amounts, together with the previous assessment, made April 26, 1930, of $7,758.58 in taxes and $518.34 in interest thereon (which last amounts had been paid to the Collector prior to October 31, 1931, as hereinafter set out in subparagraph (b) hereof), made a total of $57,090.15. The Commissioner made a further audit of such return for the year 1928 and as a result thereof issued a certificate of overassessment bearing the number 2223612, a true copy of which is hereto attached as Exhibit K, and by reference is made a part hereof. By said certificate $34,543.10 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed for the year 1928 but outstanding and unpaid as follows: income taxes, $12,774.52; interest thereon to October 31, 1931, $1,495.61; total, $14,270.13.

b. On April 29, 1930, pursuant to a demand of the Collector, the Paper Company paid to him $7,758.58, together with interest thereon of $518.34, the additional tax and interest for the year 1928, assessed by the Commissioner on the
190 April 26, 1930 Assessment List for the District of Minnesota. On February 9, 1932, the receivers filed a claim for refund of such additional tax and interest so paid. A true copy of said claim is hereto attached as Exhibit L, and by reference is made a part hereof. The "Statement of Objections" dated January 27, 1932, to which said Exhibit L makes reference, alleged as error the disallowance by the Commissioner of the deduction for 1926 of $790,355.20 of the amount of $791,200.51 referred to in Section IX (h) above. Said claim for refund was rejected by the Commissioner and the receivers of the Paper Company notified thereof by letter dated July 13, 1933.

XIII.

In making his final determination of income tax liability for the said year 1926, the Commissioner did not allow as a deduction the item of $788,879.21 designated in the Board's orders as penalties, and did not allow as a deduction $1475.99 of the amount paid by the Paper Company as interest, all as set out in paragraph IX (h) hereof. In arriving at the total tax liability of $33,565.47 for the year 1926, the Commissioner determined a consolidated net income of $248,633.10. In arriving at the total tax liability of $38,965.14 for the year 1927, the Commissioner determined a consolidated net income of $288,630.69. In arriving at the total tax liability of $20,533.10 for the year 1928, the Commissioner determined a consolidated net income of $187,094.55. The foregoing consolidated net incomes for the years 1926, 1927, and 1928 were arrived at as to each company of the affiliated group as follows:

Year 1926

Net Income:		
Minnesota and Ontario Paper Company		$462,609.08
Falls Lumber and Coal Company		41,400.37
		$504,009.45
Less Net Losses:		
International Lumber Company	$163,108.72	
Minnesota, Dakota & Western Ry. Co.	16,874.38	
Rainy River Improvement Company	19,860.81	
Minnesota Forest Products Company	55,532.44	255,376.35
Consolidated Net Income for 1926		$248,633.10

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Year 1927

Net Income:		
Minnesota and Ontario Paper Company		$678,568.62
Falls Lumber Company		32,490.43
		$711,059.05
Less Net Losses:		
International Lumber Company	$312,502.11	
Minnesota, Dakota & Western Ry. Co.	36,222.37	
Rainy River Improvement Co.	20,519.49	
Minnesota Forest Products Co.	53,184.39	
		422,428.36
Consolidated Net Income for 1927		$288,630.69

	Year 1928	
Net Income:		
Minnesota and Ontario Paper Company		$314,796.00
Minnesota Dakota & Western Railway Co.		48,828.43
Falls Lumber and Coal Company		21,967.71
		$385,592.14
Less Net Losses:		
International Lumber Company	$130,016.31	
Rainy River Improvement Co.	14,719.76	
Minnesota Forest Products Co.	53,761.52	
		198,497.59
Consolidated Net Income for 1928		$187,094.55

XIV.

a. On June 10, 1933, the receivers of the Paper Company filed a petition in this Court. A true copy of said petition, together with exhibits included therein, is attached as Exhibit M and by reference is made a part hereof.

b. On June 10, 1933, this Court entered its order granting the prayer of said petition. A true copy of said order, omitting exhibits included therein, is attached as Exhibit N, and by reference is made a part hereof. The exhibits included in said order are identical with those included in the petition, Exhibit M.

c. On June 12, 1933, pursuant to the authorization given in the court order aforesaid, the Paper Company and its affiliates executed, and on July 7, 1933, the Commissioner executed, with the approval of the Secretary of the Treasury on the same day given, an agreement entered into under and in pursuance of Section 606 of the Revenue Act of 1928. A true
192 copy of said agreement is hereto attached as Exhibit O, and by reference is made a part hereof.

d. On August 1, 1933, the action referred to in Section V (c) above, pursuant to a stipulation filed, a copy of which, omitting signatures, is included in Exhibit M, was dismissed with prejudice. On June 22, 1933, pursuant to a stipulation filed, a copy of which, omitting signatures, is included in Exhibit M, the Board entered an order in the proceeding referred to in Section VII (c) above, determining an overpayment of the Paper Company's income taxes for the year 1924 in the amount of $23,904.23. On June 22, 1933, pursuant to a stipulation filed, a copy of which, omitting signatures, is in-

cluded in Exhibit M, the Board entered an order in the proceeding referred to in Section VIII (c) above, determining an overpayment of the Paper Company's income taxes for the year 1925 in the amount of $7,800.00.

XV.

a. Between July 7, 1933, and July 13, 1933, the Commissioner prepared a certificate of overassessment for the year 1922 in the amount of $49,318.77, a certificate of overassessment for the year 1923 in the amount of $29,427.69, a certificate of overassessment for the year 1924 in the amount of $80,450.55, and a certificate of overassessment for the year 1925 in the amount of $12,193.99. True copies of said certificates of overassessment are hereto attached as Exhibits P, Q, R, and S respectively and by reference are made parts hereof. On July 13, 1933, the Commissioner approved a schedule of overassessments on which appeared the aforesaid overassessments, and transmitted the same, together with the foregoing certificates of overassessment, to the Collector for his action in accordance with the instructions appearing on said schedule.

193 A copy of the schedule of overassessments is hereto attached as Exhibit T and by reference is made a part hereof.

b. On July 20, 1933 the Collector signed the schedule of overassessments and certified that the overassessments for the years 1922 to 1925, inclusive, were adjusted as follows:

(1) The overassessment of $49,318.77 for the year 1922 was determined to be an overpayment and was credited in the amounts of $42,884.00 and $6,434.77 against the additional income taxes assessed against the Paper Company for the years 1926 and 1927, respectively, and referred to in Sections X and XI above. Interest of $24,034.76 computed upon said overpayment of $49,318.77 was credited against outstanding and unpaid withholding taxes assessed by the Commissioner against the Paper Company for the year 1921.

(2) The overassessment of $29,427.69 for the year 1923 was determined to be an overpayment and was credited against the additional income taxes assessed against the Paper Company for the year 1927, referred to in Section XI above. Of the interest of $12,142.75 computed upon said overpayment of $29,427.69 for the year 1923, $1,235.69 was credited against outstanding and unpaid withholding taxes assessed by the Commissioner against the Paper Company for the year 1921 and the remainder of such interest in the amount of $10,907.-

06 was credited against withholding taxes assessed against the Paper Company for the years 1930 and 1931.

(3) Of the overassessment of $80,450.55 determined by the Commissioner for the year 1924, the amount of $56,546.32 was abated and the balance, $23,904.23, was determined to be an overpayment and was credited in the respective amounts of $11,582.66 and $12,321.57 against the additional in-
194 come taxes assessed against the Paper Company for the years 1927 and 1928 and referred to in Sections XI and XII above. Of the interest of $8,521.94 computed upon said overpayment of $23,904.23 for the year 1924, $3,038.92 was credited against withholding taxes assessed by the Commissioner against the Paper Company for the year 1921 and the remainder of such interest in the amount of $5,483.02 was credited against withholding taxes assessed against the Paper Company for the years 1930 and 1931.

(4) Of the overassessment of $12,193.99 determined by the Commissioner for the year 1925, the amount of $4,393.99 was abated and the balance, $7,800.00, was determined to be an overpayment. Of such overpayment, $5,851.44 was credited against outstanding and unpaid withholding taxes assessed by the Commissioner against the Paper Company for the years 1930 and 1931, and the remainder of such overpayment in the amount of $1,948.56 was credited against the additional income taxes assessed by the Commissioner against the Paper Company for the year 1928 and referred to in Section XII above. The interest computed upon said overpayment of $7,800.00 in the amount of $2,501.09 was credited against outstanding withholding taxes assessed by the Commissioner against the Paper Company for the year 1921.

c. The interest computed upon the overpayments for 1922 to 1925, inclusive, was credited as set out in subparagraph (b) above rather than as shown on the certificates of overassessment, Exhibits P, Q, R, and S.

XVI.

On August 16, 1933, the Commissioner through the Collector delivered to the Paper Company the certificates of overassessment, Exhibits P, Q, R, and S.

195 On August 21, 1933, the Commissioner mailed to the Paper Company two letters. True copies of said letters are hereto attached as Exhibit U and Exhibit V and by reference are made parts hereof.

XVII.

The amounts of overassessments of taxes determined by the Commissioner in Exhibits P, Q, R, and S are the amounts of taxes assessed for the years 1922, 1923, 1924 and 1925, respectively, in excess of the tax liability for each of those years mutually agreed upon in Exhibit O.

The amounts of the overassessments were determined on the basis of grounds for refund specified in the claims for refund filed as aforesaid for the years 1922 to 1925, inclusive.

XVIII.

a. Not later than March 15, 1922, the Paper Company filed with the Collector for the year 1921 a return on a form, a copy of which is hereto attached and made a part hereof as Exhibit W, and paid to the Collector the amount of tax shown as due thereon. In said return no report was made or tax paid in respect of any interest owing by the Paper Company to the Fort Frances Company upon unpaid balances for newsprint paper supplied by the latter company to the former, and nowhere upon said return did the name of the Fort Frances Company appear.

b. On October 4, 1932, the Deputy Collector for the District of Minnesota, under the provisions of Section 3176 of the Revised Statutes, prepared and forwarded to the Commissioner of Internal Revenue a delinquent withholding tax return for the Paper Company, then in receivership under an order of this Court, reporting $164,525.98 as income paid by the Minnesota and Ontario Paper Company to Fort Frances Pulp and Paper Company, Ltd., during the year 1921. The Commissioner determined withholding tax, and penalty
196 and interest in respect thereof in the respective amounts of $16,452.60 tax, $4,113.15 penalty, and $10,556.14 interest. The Commissioner assessed against the said Paper Company the total amount of $31,121.89 on his July 10, 1933 assessment list for the District of Minnesota. A copy of said return is attached hereto marked Exhibit X and by reference made a part hereof.

Said withholding tax liability of $31,121.89 was satisfied as hereinbefore set forth in Paragraph XV (b) of this stipulation.

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Attorneys for Plaintiffs.

.....

Attorneys for Defendant.

Dated ....., 1936.

197 Exhibit A.

Petition.

In the District Court of the United States For the District of Minnesota, Third Division.

Minnesota and Ontario Paper Company, a corporation, 1100 Builders Exchange Building, Minneapolis, Minnesota, Plaintiff,

No. 2245. vs. Law.

Levi M. Willcuts, Collector of Internal Revenue, for the District of Minnesota, Defendant.

1. Plaintiff is a corporation duly incorporated under the laws of the State of Maine and is now and during all of the times hereinafter referred to was engaged in the manufacture of newsprint paper, kraft paper and insulating material, with its principal place of business at 1100 Builders Exchange Building, Minneapolis, Minnesota.

2. The defendant, Levi M. Willcuts, is now and during all of the times hereinafter referred to was the duly appointed and acting Collector of Internal Revenue for the District of Minnesota.

3. On March 14, 1923, pursuant to the provisions of Treasury Decision 3434, promulgated by the Commissioner of Internal Revenue on February 6, 1923, the plaintiff filed with the defendant a tentative return of its income for the taxable year 1922, said tentative return being filed on behalf of the plaintiff and its following named subsidiary corporations, to-wit:

International Lumber Company
Minnesota, Dakota and Western Railway Company
Rainy River Improvement Company
Falls Lumber and Coal Company
Watrous Island Boom Company.

198 Said tentative return disclosed an estimated tax liability of $70,000.00 on account of income taxes for the taxable year 1922 for said affiliated group. Said tentative return disclosed no specific items of income nor deductions.

4. On June 15, 1923, the plaintiff filed with the defendant a completed consolidated return for said taxable year 1922 on behalf of itself and said affiliated group, which return disclosed a net income, after deductions, of $534,550.16 and a tax liability of $66,818.77.

5. The defendant listed said completed consolidated return under Account No. 400,074, and plaintiff's payments upon said account were credited by the defendant as follows:

June 15, 1923	$15,909.39
July 17, 1923	17,500.00
Sept. 15, 1923	16,704.70
Dec. 15, 1923	16,704.68

6. The total amount of said tax was assessed against and all of said payments were made by the plaintiff.

7. On June 15, 1925, the plaintiff notified defendant in writing that plaintiff's income and excess profits tax returns for the years 1917 to 1920, inclusive, were pending on appeal to the United States Board of Tax Appeals and that the determination of the questions therein involved might have a bearing upon the consolidated returns filed subsequent to the year 1920, in which case amended consolidated returns would be filed for the years 1921 to 1924, inclusive, to accord with the decisions of the Board of Tax Appeals, when and as the same were rendered.

8. On March 6, 1926, the United States Board of Tax Appeals issued three separate orders relating to the plaintiff's taxes for the years 1917, 1918, 1919 and 1920, said orders affecting plaintiff's net loss in 1921, which net loss when carried forward to 1922, under the provisions of the revenue laws then in force, eliminated all profits of the plaintiff and its subsidiaries for the year 1922.

199 9. On March 12, 1926, plaintiff advised the Commissioner of Internal Revenue by letter that amended income and excess profits tax returns for the years 1921 to 1924, inclusive, would be filed immediately. Thereupon the Bureau of Internal Revenue caused an investigation of said years to be made by Field Agent A. W. Hayes, who advised plaintiff that amended returns would be rendered unnecessary by his report.

10. On June 5, 1926, said Agent A. W. Hayes submitted to the Internal Revenue Agent in Charge at St. Paul, Minnesota, his report of said investigation in which it was disclosed that inventory and other income adjustments arising from said prior years, 1917, 1918, 1919 and 1920 had eliminated all profit for the year 1922. Said report further disclosed that the plaintiff and its subsidiaries had a net loss of $240,379.60 for said year 1922 and that plaintiff was entitled to a refund of the entire amount of tax paid for said year 1922, to-wit: $66,818.77. Said Internal Revenue Agent

in Charge transmitted a copy of said report to the plaintiff on June 25, 1926.

11. On May 7, 1927, the Treasury Department notified plaintiff by letter that the findings disclosed in said Revenue Agent's report showing an overpayment of $66,818.77 had been approved, with the exception of $17,500.00 thereof, and that the balance of said overpayment, to-wit: $49,318.77, would be refunded.

12. On June 14, 1927, plaintiff filed with the defendant a claim for refund demanding the refund of said overpayment of $66,818.77.

13. On October 16, 1928, said claim for refund was allowed as to $49,318.77 thereof and rejected as to $17,500.00 thereof, but at the date of the filing of this petition no part of said amount has been refunded, credited or paid back to plaintiff, and the plaintiff further alleges that it was not at said time indebted to the defendant on account of any income, war profits or excess profits tax, or any installment thereof.

200 14. On April 30, 1929, the plaintiff filed with the defendant a perfected claim for refund for said year 1922 pursuant to the provisions of Treasury Decisions 4265 and 4266 promulgated by the Commissioner of Internal Revenue March 27, 1929, said claim for refund claiming a refund due to the plaintiff of $66,818.77.

15. On August 22, 1930, the Commissioner of Internal Revenue notified the plaintiff that its claim for refund of said taxes for 1922 in said amount of $66,818.77 had been rejected under schedule dated August 22, 1930.

16. By reason of the premises and the facts aforesaid, plaintiff claims that it is entitled to the payment of the full amount of said overpayment, to-wit: $66,818.77, and that said sum unlawfully is withheld by the defendant.

Wherefore, plaintiff asks judgment against defendant for the sum of $66,818.77, with interest at 6% per annum from June 15, 1923, on $15,909.39 thereof, with interest at 6% per annum from July 17, 1923, on $17,500.00 thereof with interest at 6% per annum from September 15, 1923, on $16,704.70 thereof and with interest at 6% per annum from December 15, 1923, on $16,704.68 thereof, together with the costs of this action.

CARMI A. THOMPSON &
ORVILLE SMITH,
JOSEPH B. SHEPLER,
Attorneys for Plaintiff,
2104 Terminal Tower Bldg.
Cleveland, Ohio.

United States of America,
State of Minnesota,
County of Hennepin—ss.:

E. W. Backus, being first duly sworn, deposes and says that he is the President of Minnesota and Ontario Paper Company, plaintiff in the aforesaid petition; that he has read the foregoing petition and is familiar with all of the facts therein alleged and that said facts, statements and
201 allegations therein contained are true, as he verily believes.

E. W. BACKUS.

Sworn to before me and subscribed in my presence this 25th day of September, 1930.

(Seal)

E. M. MERRICK,
Notary Public in and for Hennepin County, Minnesota.

My Commission expires Oct. 12th, 1930.

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202 Exhibit B.

Answer.

United States District Court, District of Minnesota, Third Division.

Minnesota And Ontario Paper Company, a corporation, 1100 Builders Exchange Building, Minneapolis, Minnesota, Plaintiff,

No. 2245. vs. At Law.

Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota, Defendant.

The defendant, Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota, in answer to the petition of the plaintiff herein, denies each and every allegation thereof.

Wherefore, the defendant prays that the plaintiff take nothing herein, that the complaint be dismissed and for such other and further relief as to the Court may seem proper.

LEWIS L. DRILL,
United States Attorney and Attorney for the Defendant.

203 United States District Court, District of Minnesota, Third Division.

Minnesota And Ontario Paper Company, A Corporation, 1100 Builders Exchange Building, Minneapolis, Minnesota, Plaintiff,

No. 2245. vs. At Law.

Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota, Defendant.

State of Minnesota,
County of Ramsey—ss.:

Levi M. Willcuts, being first duly sworn, on oath says that he is the Collector of Internal Revenue for the District of Minnesota, the defendant in the above entitled action; that he has read the foregoing answer; that the same is true of his own knowledge except as to matters stated therein on information and belief, and as to such matters he believes it to be true.

LEVI M. WILLCUTS.

Subscribed and sworn to before me this 10th day of October, 1930.

E. M. HEIMBACH,
Notary Public, Ramsey County, Minn.

My Commission Expires Oct. 1st, 1932.

Seal

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204 Exhibit "C".

Stipulation.

(Filed Feb. 26, 1926, United States Board of Tax Appeals.)

United States Board Of Tax Appeals.

Appeals of: Minnesota & Ontario Paper Co., and its Affiliated Corporations, to-wit: International Lumber Co. Falls Lumber & Coal Co. International Insulation Co. Minnesota, Dakota & Western RR. Co. Rainy River Improvement Co., and Watrous Island Boom Co.

Docket Nos. 2128-2127-2699.

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & On-

tario Paper Co., and its said affiliated corporations, hereinafter referred to as the "taxpayer", by its counsel, that the deficiency in tax of said taxpayer for the taxable years 1917, 1918, 1919 and 1920, shall be determined and assessed in accordance with the following agreement.

1.

That on or about October 1, 1908, the Minnesota & Ontario Paper Co. acquired from the Backus-Brooks Co., a corporation, all of the outstanding stock of the Ontario & Minnesota Power Co. Ltd., a Canadian corporation, and of the Rainy River Improvement Co., an American corporation, and other assets in exchange for its 10,000 shares of preferred stock of a par value of $1,000,000, and 50,000 shares of common stock of a par value of $5,000,000 and other considerations. That the value of the stock and other assets so acquired by the Minnesota & Ontario Paper Co. from the Backus-Brooks Co. in exchange for its 10,000 shares of preferred stock and 50,-
000 shares of common stock as referred to in para-
205 graph 2 of the taxpayer's amended petition filed with the Board of Tax Appeals on September 25, 1925, was $2,914,000.

II.

On or about December 31, 1905, the International Lumber Co. acquired from the Backus-Brooks Co. certain timber and other property in exchange for 6,000 shares of its capital stock of a par value of $100 per share. That the actual cash value of the timber so acquired by the International Lumber Co. for its said stock was $754,861.50, and the International Lumber Co. is entitled to include in its invested capital account said amount of $754,861.50.

The International Lumber Co. acquired by deed dated March 10, 1909, from the Backus-Brooks Co. certain timber and other property referred to in paragraph 2(a) of the taxpayer's amended petition, in exchange for 4,000 shares of its capital stock of a par value of $100 per share and cash in the amount of $198,396.78. The taxpayer is entitled to include in its invested capital account on account of the property so acquired for its stock and other considerations as hereinbefore mentioned said amount of $598,396.78.

III.

During the taxable years 1917, 1918, 1919 and 1920, the Minnesota & Ontario Paper Co. purchased from the Fort Frances Pulp & Paper Co. Ltd., a Canadian corporation, newsprint paper in the quantities and for the amounts hereinafter

stated, as alleged in paragraph 3 of the taxpayer's amended petition.

206

	Tons.	Purchase Price.
1917	28,685	$1,721,112.90
1918	22,907	1,512,114.65
1919	24,595	1,763,685.93
1920	36,736	3,688,378.98

That all of the newsprint so purchased by the Minnesota & Ontario Paper Co. from the Fort Frances Pulp & Paper Co. Ltd., was resold by the Minnesota & Ontario Paper Co. at a profit. The taxable profit derived by the Minnesota & Ontario Paper Co. from the sale of the newsprint paper purchased from the Fort Frances Pulp & Paper Co. Ltd., as aforesaid for each of said taxable years is, as follows:

1917	$ 88,982.87
1918	81,290.54
1919	97,989.68
1920	184,854.00

During the taxable years 1917, 1918, 1919 and 1920, the Minnesota & Ontario Paper Co. sold to the Fort Frances Pulp & Paper Co. Ltd., pulpwood in the quantities and for the amounts hereinafter stated, as alleged in paragraph 3(a) of the taxpayer's amended petition:

1917	27,939 2/8	$328,435.25
1918	13,492	161,904.00
1919	27,960 4/8	433,086.49
1920	31,718 4/8	666,364.50

During each of the taxable years 1917, 1918, 1919 and 1920, the Minnesota & Ontario Paper Co. sold to the Fort Frances Pulp & Paper Co. Ltd., sulphite in the quantities and for the amounts hereinafter stated, as alleged in paragraph 3(a) of the taxpayer's amended petition:

1917	9,995.8995	$ 774,486.51
1918	8,103.8552	526,750.60
1919	9,250.2030	948,163.89
1920	11,783.4686	1,296,992.74

That the total prices received by the Minnesota & Ontario Paper Co. from the Fort Frances Pulp & Paper Co.
207 Ltd., on the sale of said pulpwood and sulphite were fair and reasonable and the action of the Commissioner in allowing the transactions to stand, as shown by the

books of the taxpayer, is hereby accepted as correct by the taxpayer.

During each of the taxable years 1917, 1918, 1919 and 1920, the Minnesota & Ontario Paper Co. realized a gross profit on the sale of hog fuel to the Fort Frances Pulp & Paper Co. Ltd., as follows:

1917	$ 700.00
1918	8,080.00
1919	9,950.00
1920	16,350.00

in lieu of the profits shown for each of said years on the books of the taxpayer on account of the sale of hog fuel from the taxpayer to the Fort Frances Pulp & Paper Co. Ltd., for each of said years.

V.

That the International Lumber Co. is not entitled to include in its invested capital account for either or any of the taxable years 1917, 1918, 1919 and 1920, the value of the timber alleged to have been acquired from the Backus-Brooks Co. under an alleged contract bearing date of October 10, 1910, and referred to in paragraph 4 of the taxpayer's amended petition.

VI.

During the taxable years 1917, 1918, 1919 and 1920, the International Lumber Co. sustained losses in its timber and pulpwood holdings in the following amounts which the taxpayer is entitled to deduct from its gross income in computing its net income for the taxable years in question:

1917	Saw Timber	$24,672.92	Pulpwood	$3,431.40
1918	"	14,814.80	"	3,909.78
1919	"	17,993.14	"	3,598.32
1920	"	None	"	None

VII.

208 The taxpayer sustained depreciation on its logging spur known as the "Mizpah Spur" and referred to in paragraph 6 of the taxpayer's amended petition, for each of the taxable years 1917, 1918, 1919 and 1920, as follows:

1917	$ 7,605.04
1918	38,633.48
1919	18,952.36
1920	45,547.63

The taxpayer is not entitled to an allowance for depreciation on the Cut Foot Sioux line referred to in paragraph 6 of the taxpayer's amended petition in excess of the amount heretofore allowed by the Commissioner and the taxpayer's claim in respect thereto is hereby waived and withdrawn.

The taxpayer, the International Lumber Co., hereby waives and withdraws its claim with respect to the deduction claimed on account of fraud in the construction of the "Cut Foot Sioux" and "Galvin-Nett-Lake" lines as referred to in paragraph 6(a) of the taxpayer's amended petition.

VIII.

The value of the taxpayer's saw timber as of March 1, 1913, was $6.00 per 1,000 board feet and the value of its pulpwood as of said date was $1.00 per cord.

That in computing the net income of the International Lumber Co. for each of the taxable years 1917, 1918, 1919 and 1920, the following lumber inventory figures shall be accepted and agreed to by the parties to this stipulation:

December 31, 1916	$1,814,954.84
1917	1,540,481.55
1918	2,191,267.84
1919	2,149,496.20
1920	2,550,461.54

209 It is stipulated and agreed that the inventories shown above as December 31, 1920, in the amount of $2,550,461.54 includes at its proper value the 29,480,000 feet of lumber alleged to have been sold to the Keewatin Lumber Co. Ltd.

IX.

It is further stipulated and agreed that the claim of the taxpayer as set forth in paragraph 9 of the taxpayer's amended petition shall be adjusted in accordance with paragraph 9 of the Stipulation No. 1 heretofore filed before the United States Board of Tax Appeals.

X.

The claim of the Minnesota, Dakota & Western Railway Co. against the United States Government in the amount of $105,923.44 under Section 209 of the Transportation Act of 1920 should properly be accrued upon the books of the taxpayer for the taxable year 1920 and included in its taxable income for said year.

It is agreed that the taxpayer may at any time before the said claim is barred by the Statute of Limitations after the payment of the tax as computed under this stipulation (and notwithstanding anything herein or in any other agreement between it and the Commissioner of Internal Revenue, or the Secretary of the Treasury to the contrary) file a claim for refund for the tax imposed upon it by reason of this claim of $105,923.44 being taxed as taxable income. In the event that the said claim of $105,923.44 filed under Section 209, or any part thereof, is disallowed by the United States Government or withdrawn by the taxpayer said claim for refund shall thereupon be allowed as provided by law, together with such interest, if any, as may be permitted under the statute.

210

XI.

The taxpayer hereby withdraws its claim for a deduction of $144,535.79 on account of the tearing out and abandonment of a portion of the dam referred to in paragraph 11 of the taxpayer's amended petition, and accepts as correct the action of the Commissioner in refusing to allow the deduction taken on account of said item.

XII.

The taxpayer hereby withdraws its claim with respect to a loss alleged to have been sustained on account of the alleged sale of the Engler Mill Site referred to in paragraph 12 of the taxpayer's amended petition and accepts as correct the Commissioner's action in refusing to allow the deduction taken on account of said alleged transaction.

XIII.

The taxpayer hereby withdraws its claim with respect to a loss alleged to have been sustained on account of the alleged sale of the Beaver Land & Timber Co. asset referred to in paragraph 13 of the taxpayer's amended petition and accepts as correct the Commissioner's action in refusing to allow the deduction taken on account of said alleged transaction.

XIV.

It is further stipulated and agreed that the sum of $530,660.00 representing the gross selling price of the lumber alleged to have been sold by the taxpayer to the Keewatin Lumber Co. Ltd., as set forth in paragraph 14 of the taxpayer's amended petition, was erroneously added to the taxable net income of the International Lumber Co. as computed and set

out in the deficiency letter covering the taxable year 1920.

The taxpayer hereby withdraws its claim to the deduc-
211 tion on account of the loss alleged to have been sustained on account of said transaction and hereby agrees to and accepts as correct the action of the Commissioner in holding that said alleged sale was a nullity, void and of no effect.

XV.

The taxpayer hereby agrees to and accepts as correct the action of the Commissioner in disallowing as a deduction for the taxable year 1920 the sum of $213,068.94 referred to in paragraph 15 of the taxpayer's amended petition.

XVI.

The taxpayer hereby withdraws its claim with respect to the loss in its coal inventory of $60,200.00 referred to in paragraph 16 of the taxpayer's amended petition and hereby agrees to and accepts as correct the action of the Commissioner in refusing to allow the deduction taken in the year 1920 on account of said transaction.

XVII.

The taxpayer deducted from its income for the taxable year 1920 the sum of $46,417.92 on account of an alleged loss sustained as the result of a decision of the Supreme Court of the State of Minnesota rendered on December 26, 1919, and referred to in paragraph 17 of the taxpayer's amended petition. The Commissioner refused to allow any deduction on account of said alleged loss, and the taxpayer hereby withdraws its claim with respect to said loss and agrees to and accepts as correct the action of the Commissioner in disallowing same.

212 XVIII.

It is further stipulated and agreed that the Backus-Brooks Co. and the Minnesota & Ontario Paper Co. were not affiliated for the years 1917, 1918, 1919 and 1920, within the meaning of Section 240 of the Revenue Act of 1918, or any other Revenue Acts.

XIX.

During the taxable year 1920 the Ontario & Minnesota Power Co. Ltd., sold to the taxpayer (Minnesota & Ontario Paper Co.) certain horse power at $100 per horse power per annum. The fair market value of the horse power so purchased by the Minnesota & Ontario Paper Co. from the Ontario & Minnesota Power Co. Ltd., a Canadian corporation, and a subsidiary of the taxpayer (Minnesota & Ontario Paper

Co.) was $25.00 per horse power per annum and the taxpayer hereby agrees to and accepts as correct the action of the Commissioner in disallowing as a deduction by the taxpayer the sum of $152,998.88 on account of this item.

XX.

It is further stipulated and agreed that the action of the Commissioner in including in the taxable income of the Minnesota, Dakota & Western Railway Co. in each of the taxable years 1917, 1918, 1919 and 1920, the sum of $12,500.00 representing the interest accrued on the obligation of the International Bridge & Terminal Co., a Canadian corporation, referred to in paragraph 20 of the taxpayer's amended petition is hereby agreed to and accepted as correct by the taxpayer.

It is hereby stipulated and agreed that there shall be added to the invested capital of the taxpayer for each of the taxable years 1917, 1918, 1919 and 1920, the sum of $205,960.27, in addition to the amount heretofore allowed by the Commissioner on account of said obligation.

213

XXI.

The taxpayer, the Minnesota & Ontario Paper Co., is not entitled to have its excess profits taxes computed in accordance with the provisions of Section 210 of the Revenue Act of 1917, and Sections 327 and 328 of the Revenue Act of 1918.

XXII.

The taxpayer hereby agrees to and accepts as correct the action of the Commissioner in restoring to the taxable net income of the Minnesota & Ontario Paper Co. for the taxable year 1920 the sum of $10,400.00 taken as a deduction on account of the sale of stock of the Liberty National Bank which was consummated on January 31, 1921.

XXIII.

The taxpayer hereby consents to the action of the Commissioner in restoring to the taxable net income of the Rainy River Improvement Co. for the taxable year 1917 the sum of $9,250.00 as alleged in paragraph 26 of the Commissioner's answer to the taxpayer's amended petition on account of the payment made by it to the Virginia & Rainy Lake Lumber Co.

XXIV.

It is stipulated and agreed that the taxpayer erred in deducting from its taxable income for the year 1917 the sum of

$184,061.30 on account of the loss on "Kraft Mill" but the taxpayer was entitled to take such deduction for the taxable year 1918 and the taxable income for such two years shall be recomputed accordingly.

XXV.

The Commissioner hereby withdraws the claim asserted in respect to the accrual of taxes referred to in para-
214 graph 25 of the Commissioner's answer to the taxpayer's amended petition.

XXVI.

It is hereby expressly agreed and understood that the claim of the Minnesota, Dakota & Western Railway Co., in the sum of $158,035.00, arising under Section 204 of the Transportation Act of 1920 is excepted from the operation of this agreement and the taxpayer hereby waives the benefit of any statute of limitations and consents to the assessment of any additional tax which may result from the allowance and payment of all or any part of said claim at any time hereafter.

XXVII.

It is further stipulated and agreed that the understatement of the amount of the taxable net income as shown by the returns filed by the taxpayer herein for each of the taxable years 1917, 1918, 1919 and 1920, was due to negligence on the part of the taxpayer but without intent to defraud.

Dated: February 25, 1926.

THE MINNESOTA & ONTARIO
PAPER CO.
RALPH M. SHAW,
JOHN JUNELL,
Attorneys in Fact.

COMMISSIONER OF INTERNAL
REVENUE,
A. W. GREGG,
Solicitor of Internal Revenue.

AH E. C. L.

215 Exhibit D.

Order.

United States Board Of Tax Appeals.

Appeal of: Docket No. 2128.
Minnesota & Ontario Paper Co.

Now on this sixth day of March, 1926, the above entitled appeal coming on for hearing on the stipulation of the taxpayer and the Commissioner, signed and executed by their respective counsel, and it appearing from said stipulation and other documentary evidence submitted that the true tax liability of the Minnesota & Ontario Paper Co. and its affiliated corporations for the taxable year 1917 is $531,073.65 of which the sum of $41,540.25 has heretofore been paid, and the sum of $801,379.16 has heretofore been assessed, and it further appearing that there is due a penalty of $227,633.03, no part of which has been assessed or paid:

Now, therefore, it is considered and

Ordered that the amount of tax deficiency and penalty due from the taxpayer be and the same is hereby redetermined for the year 1917 to be $489,533.40 tax, and $227,633.03 penalty, and that of the tax heretofore assessed there shall be abated the sum of $270,305.51 and the amount of the penalty of $227,633.03 shall be assessed and paid.

Dated Washington, D. C., March 6, 1926.

J. G. KORNER, JR.,
AH Chairman, U. S. Board of Tax Appeals.

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216 Exhibit E.

Order.

United States Board Of Tax Appeals.

Appeal of The Minnesota & Ontario Paper Co.

Docket No. 2127.

Now on this sixth day of March 1926 the above entitled appeal coming on for hearing on the stipulation of the taxpayer and the Commissioner, signed and executed by their respective counsel, and it appearing from said stipulation and other documentary evidence submitted that the true tax liability of the Minnesota & Ontario Paper Company and its affiliated corporations for the taxable year 1918 is $410,901.66 of which the sum of $56,958.18 has been paid and it appearing that the sum of $943,623.84 has heretofore been assessed and it further appearing that there is due a penalty of $139,897.55 no part of which has been assessed or paid.

Now therefore it is considered and

Ordered that the amount of tax deficiency and penalty due from the taxpayer be and the same is hereby redetermined for the year 1918 to be $351,943.48 tax deficiency, and $139,897.55 penalty, and that of the tax heretofore assessed there shall be abated the sum of $532,722.18 and the amount of the penalty of $139,897.55 shall be assessed and paid.

J. G. KORNER, JR.,
Chairman,
U. S. Board of Tax Appeals.

Dated, Washington, D. C., March 6, 1926.

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217 Exhibit F.

Order.

United States Board Of Tax Appeals.

Appeal of The Minnesota & Ontario Paper Company

Docket No. 2699

Now on this the sixth day of March 1926 the above entitled appeal coming on for hearing on the stipulation of the taxpayer and the Commissioner, signed and executed by their respective counsel, and it appearing from said stipulation and other documentary evidence submitted that the true tax liability of the Minnesota & Ontario Paper Company and its affiliated corporations for the taxable years 1919 and 1920 is $651,758.92 and $1,031,825.89 respectively and it appearing that there is due in addition thereto a penalty of $165,834.17 and $255,514.46 for the said respective years of which amounts $160,398.39 and $111,053.04 of tax liability respectively has heretofore been assessed and paid.

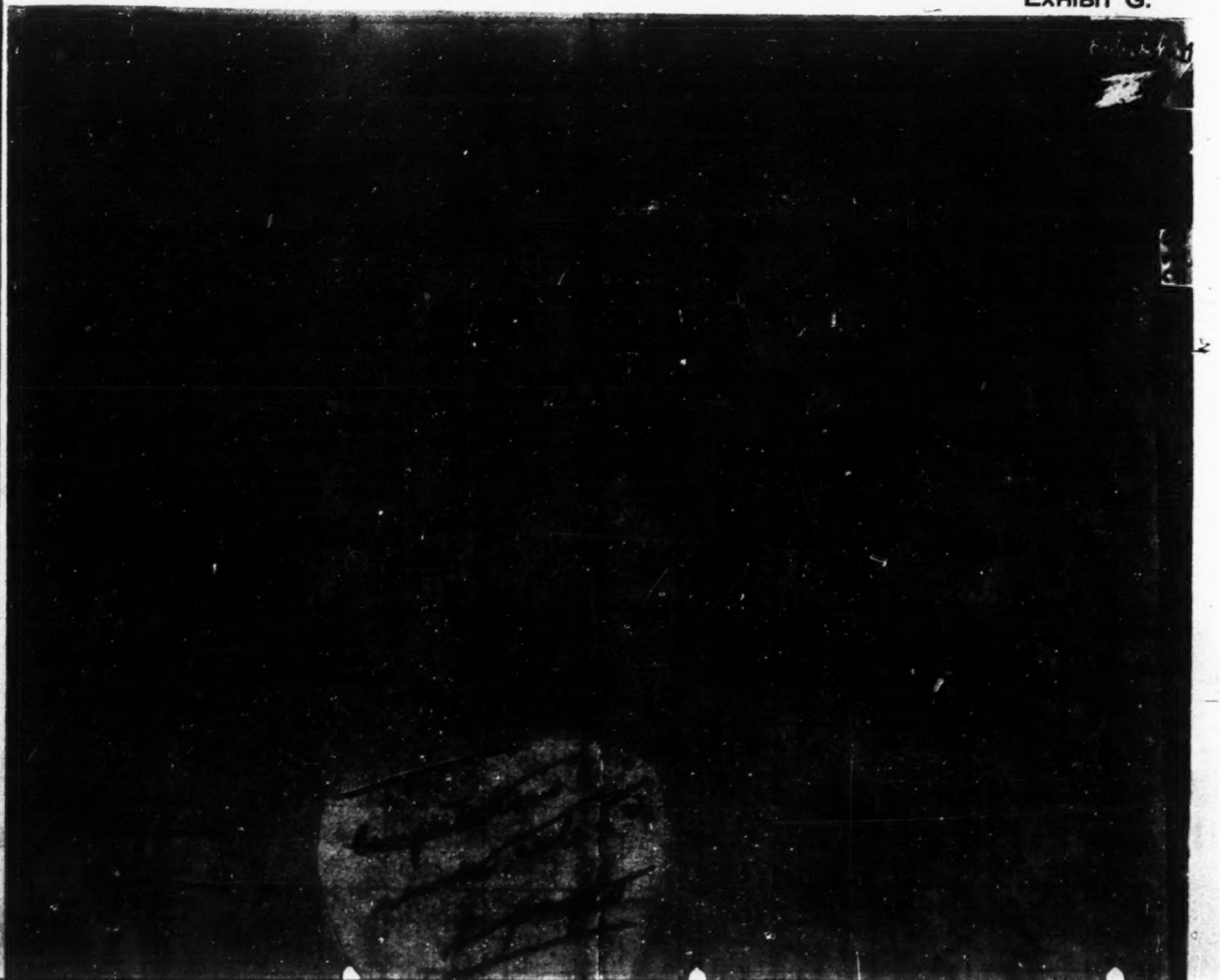
Now therefore it is considered and

Ordered that the amount of tax deficiency due from the taxpayer in and for the said years be and the same is hereby redetermined for the year 1919 to be $491,360.53 and for the year 1920 to be $920,772.85 and in addition thereto penalty in the amounts respectively of $165,834.17 and $255,514.46, which said tax deficiencies and penalties shall be assessed and paid.

Dated Washington, D. C., March 6, 1926.

J. G. KORNER, JR.,
Chairman,
U. S. Board of Tax Appeals.

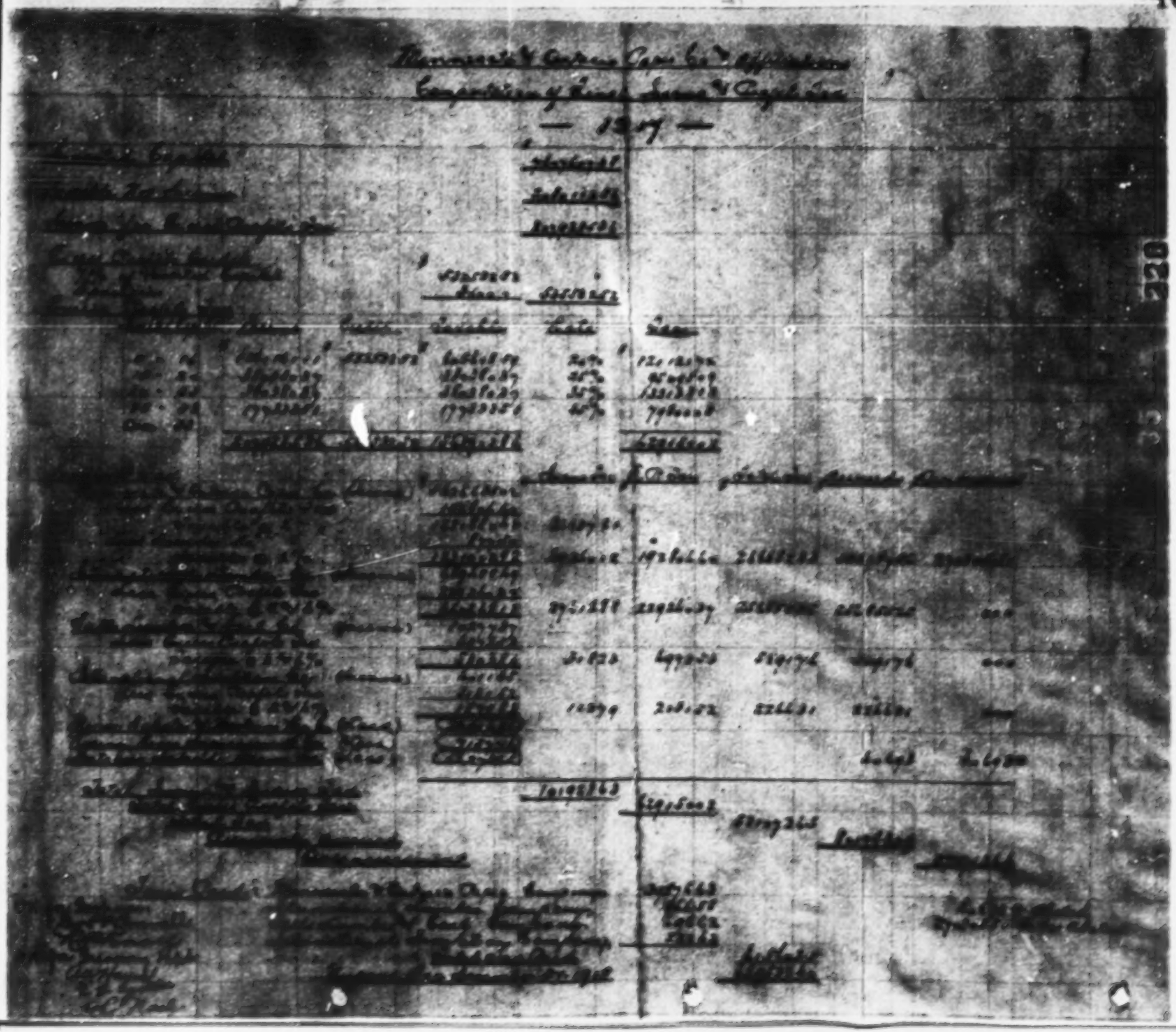
EXHIBIT G.



219

OK for Secretary:
[illegible]
Secretary

OK for Treasury Dept:
[illegible]
[illegible]



221

Assessment of Excess Profits Tax & Assessment
Computation of Excess Income & Profits Tax
1918

Capital					
Invested Capital					
Ten Per Cent Invested Capital					
Excess Profits Credit: 8% of Invested Capital					
Excess Profits Tax:					
Applied	Income	Credit	Taxable	Rate	Tax
Return 20% Over 20% Table				20% 65%	does not apply
Excess Profits Tax:					Tax
Excess Profits Tax Income Over Ten Per Cent Invested Capital				20%	
Tax					
Excess Profits Tax Income					
Less Excess Profits Tax				12%	
Net Income After Excess Profits Tax					
Previously Assessed					
Over assessment					
Total Amount of Tax above Paid					
Unpaid Tax December 31 1919					

OK for Treasury
[illegible]

OK for Treasury Dept
[illegible]

-5-

Minnesota & Ontario Paper Company & Affiliations

Computations of Excess Income & Profits Tax

	— 1919 —					— 1920 —				
	Income	Credit	Taxable	Rate	Tax	Income	Credit	Taxable	Rate	Tax
				20 %					20 %	
				40 %	25,120.				40 %	

Statement of Expenditure

Account of Expenditure	1917	1918	1919	1920	1921
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Data from individual cost and account of Commands					
From 1st 1918 to March 31st 1918	[illegible]	[illegible]			
March 1st 1919	do.	[illegible]	[illegible]	[illegible]	
June 30th 1919	do.	[illegible]	[illegible]	[illegible]	
Dec 31st 1919	do.	[illegible]	[illegible]	[illegible]	
March 31st 1920	do.	[illegible]		1228[illegible]	[illegible]
June 30th 1920	do.	[illegible]		1228[illegible]	[illegible]
Sept 30th 1920	do.	[illegible]		1228[illegible]	[illegible]
Dec 31st 1920	do.	[illegible]		1228[illegible]	[illegible]
March 31st 1921	do.	[illegible]			
June 30th 1921	do.	[illegible]			
Sept 30th 1921	do.	[illegible]			
Dec 31st 1921	do.	[illegible]			
Total Estimate		[illegible]	[illegible]	[illegible]	[illegible]

OK for the Department
[illegible]
[illegible]

OK for Surveys Pub.
[illegible]
[illegible]
[illegible]

223

-7-

Manufacturers Finance Co.

Cash Liability - Cash Value Liability

Year	Debit	Credit	Balance
1917	41,923,360	23,463,303	7,795,222
1918	35,964,210	13,867,765	49,187,108
1919	49,136,172	16,623,647	49,949,632
1920	92,077,815	22,650,446	119,628,981
Total	223,361,626	76,111,921	226,561,943

OK for the Taxpayer:
E. A. Stowell
Pittsburgh

OK for Treasury Dept.
Averill Harriman
E. Landreth
W. H. Stark

Missouri, Kansas & Texas Ry. Co. et al

Summary of Stock Certificates Sold & Delivered

COMMISSIONER'S

ASSESSMENT CERTIFICATE

strict of MINNESOTA Month MARCH SPL # 6 Year 1926

Tax Division , Chief of Division

eported and found to agree with national control ledgers. , Bookkeeper.

t the individuals, firms, and corporations reported by me on the attached list are liable for the amount of taxes, penalties, etc., entered opposite their ames are as follows:

, 192 Collector of Internal Revenue.

LIST	RETURNS FILED	EXCESS COLLECTIONS	TOTAL TAX
nal Assessments made by Commissioner:		Personal	$
		Corporation	$ 5311021 83
l by collector			
ed by commissioner			
by commissioner			
al			$ 5311021 83

I have made inquiries, determinations, and assessments of taxes, penalties, etc., of the above classification specified in these lists, and find that the total as corrected by the statement of differences and as specified in the supplementary pages of this list made by me are due from the individuals whose names such amounts are placed, and that the amount chargeable to the collector is as above.

Internal Revenue, MAR 8 1926, 192 Commissioner of Internal Revenue.

INSTRUCTIONS

e each month in quadruplicate by each tax division. The original and first copy must be forwarded with the duplicate copies of the monthly lists r within ten days after the close of the month. The second copy must be submitted with the original and duplicate Form 820 to the Accounts and after the close of the month. One copy of this certificate (Form 23C) will be returned to the collector accompanied by a statement of differences as and by additional sheets (Form 23A) containing items assessed additionally by the Commissioner.

EXHIBIT H.

Exhibit H

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TREASURY DEPARTMENT,
Internal Revenue Service.
Form 886A—Revised March, 1922.

ASSESSMENT LIST. SPECIAL NO 6

Page No. 0

District MINNESOTA — (Collection) — INCOME TAX — List MARCH 1926

	OLD BALANCE	DATE	DEBIT	CREDIT	NEW BALANCE	REMARKS
0						
1						
2						
3						
4	MINNESOTA & ONTARIO PAPER CO INTERNATIONAL FALLS MINN MAR 04 C SPL NO 6			PEN	227633 03	1917 CORP RAR JUNNY 4
5	MINNESOTA & ONTARIO PAPER CO INTERNATIONAL FALLS MINN MAR 05 C SPL NO 6			PEN	139897 55	1918 404185 RAR 5
6	MINNESOTA & ONTARIO PAPER CO INTERNATIONAL FALLS MINN MAR 06 C SPL NO 6		TAX 491360 55 PEN 165834 17 INT 807 71		658002 41	1919 1120 RAR AMD 6
7	MINNESOTA & ONTARIO PAPER CO INTERNATIONAL FALLS MINN MAR 07 C SPL NO 6		TAX 920772 85 PEN 255514 45 INT 1513 59		1177800 90	1920 JUN 400059 RAR 7
8						8
9						9

TREASURY DEPARTMENT

OFFICE OF

COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

EXHIBIT I.

143

IT:AR:D-7
WRD

CERTIFICATE OF OVERASSESSMENT

Number: 1316756

Allowed: $ 10,222.00

Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1926 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account, #857857	None	None
Additional, October 31, 1931, list #6, page 1, line 0	$41,566.02	$11,539.98
Total assessed	$41,566.02	$11,539.98
Correct tax liability	33,566.47	9,318.53
Overassessment	$ 8,000.55	$ 2,221.45

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

ILD-3

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

(Signed) H. E. ROBINSON

Head of Division.

Abated: $ 10,222.00

Credited: $
To Tax. Year

Credited: $
To Tax. Year

Refunded: $

Interest: $

Exhibit I

GENERAL ACCOUNTING OFFICE COPY

228

Form 7776 A—Form approved by Comptroller General, U. S. Oct. 29, 1930.

a-3 (a)

Statement

IT-A-4 ——— , 19—

Tax Time

RECORD OF ASSESSMENTS AND PAYMENTS

Entries to be made by the Collector according to instructions. Show, in the sixth column, by symbols "PA", "AA" or "Co", the nature of each entry in the eighth column.

Character of assessment and period covered	List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount assessed	Form, Schedule, or Claim on Date	Form, Schedule, or Claim on Amount	PA AA Co
INCOME TAX						$		$	
					Total,	$	Total,	$	

Due date of original tax (for any taxable year) to which overpayment was applied as a credit.

Credited to Year 19____

List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount credited	Due date
					$	

Due date of additional tax (1939 and prior years) to which overpayment was applied as a credit.

Credited to Year 19____

List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount credited	Due date
					$	

Date of assessment of additional tax (1941 and later years) to which overpayment was applied as a credit.

Credited to Year 19____

List	Page	Month	Assessment No. on Page	Assessment No. on Line	Month credited	Date of assessment
					$	

I CERTIFY that the records of this office are as given above; that I have caused to be prepared on Form 7776-S the full, true, and correct transcript of all payments of the taxpayer as required by Instructions; that said transcript has been carefully checked, or certified for refund as shown on the reverse of this form.

Collector of Internal Revenue. By ——— Deputy Collector.

INTEREST ALLOWANCE (Entries required to be made by the Collector)	$	$	$	$
Date	Year / Month / Day	Year / Month / Day	Year / Month / Day	Year / Month / Day
1. Date to which interest was computed				
2. Date additional tax assessed				
3. Principal of tax				
4. Interest allowed				
5. Interest allowed	$	$	$	$
6. Total	$	Date of computation Collected		229 Journal Number

INCOME TAX UNIT

TREASURY DEPARTMENT

OFFICE OF

COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

EXHIBIT J.

162

IT:AR:D-7
WLD

CERTIFICATE OF OVERASSESSMENT

Number: 1316757

Allowed: $ 13,449.44

Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120
and a consideration of all the claims (if any) filed by you for the calendar year 1927 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account, #858039		
Additional, October 31, 1931, list #5, page 1, line 1	None	None
	$30,010.72	$10,883.84
Total assessed	$30,010.72	$10,883.84
Correct tax liability	18,965.14	8,479.98
Overassessment	$11,045.58	$ 2,403.86

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

WLD-2

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

13,449.44 By direction of the Deputy Commissioner:

Respectfully,

(Signed) H. B. ROSCHEN

Head of Division.

Abated: $

Credited: $
To Tax. Year

Credited: $
To Tax. Year

Refunded: $

Interest: $

Ex. Exhibit J

230

GENERAL ACCOUNTING OFFICE COPY

Form 1118 A – Form approved by Comptroller General, U. S. [illegible]

a-3 (a)

Revenue
IT-A-4 _____ (Name of taxpayer) _____, 19____

T-D

Tax Year

RECORD OF ASSESSMENTS AND PAYMENTS

137

Entries to be made by the Collector according to instructions. Show, in the sixth column, by symbols "Pd.", "Ab." or "Cr.", the nature of each entry in the eighth column.

Character of assessment and period covered	List	Year	Month	Assessed No. on Page	Assessed No. on Line	Amount assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.
INCOME TAX						$		$	
						Total, $		Total, $	

Due date of original tax (for any taxable year) to which overpayment was applied as a credit.

Credited to Year 19____

List	Year	Month	Assessed No. on Page	Assessed No. on Line	Amount credited	Due date
					$	

Due date of additional tax (1920 and prior years) to which overpayment was applied as a credit.

Credited to Year 19____

List	Year	Month	Assessed No. on Page	Assessed No. on Line	Amount credited	Due date
					$	

Date of assessment of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19____

List	Year	Month	Assessed No. on Page	Assessed No. on Line	Amount applied	Date of assessment
					$	

I CERTIFY that the records of this office are as given above; that I have caused to be prepared on Form 7776-B the full, true, and correct transcript of all accounts of the taxpayer as required by instructions thereon; and that the amounts have been abated, credited, or certified for refund as shown on the reverse of this form.

_____ By _____
Collector of Internal Revenue. Deputy Collector.

INTEREST ALLOWANCE

(Entries not to be made by the Collector)

Items	$ Year	Month	Day	$ Year	Month	Day	$ Year	Month	Day	$ Year	Month	Day
1. Date to which interest was computed												
2. Date additional tax assessed												
3. Payment of tax												
4. Interest paid												
5. Interest allowed	$			$			$			$		
6. Total interest	$											

Date of computation Exhibit J.

231

Internal Revenue.

INCOME TAX UNIT

TREASURY DEPARTMENT
OFFICE
COMMISSIONER OF INTERNAL REVENUE
WASHINGTON

IT:AR:B-7
[illegible]

CERTIFICATE OF OVERASSESSMENT

Number: 2223612

Allowed: $ 34,843.10

Schedule No. 50519

Mr. C. T. Jaffray and Mr. R. H. M. Robinson,
Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1928 indicates that the tax assessed for that year was in excess of the amount due:

	Income tax	Interest
Income tax assessed:		
Original account #227767	None	None
Additional, April 26, 1930, account A-320108, 1930	$7,756.88	$518.34
Additional, October 21, 1931, list #6, page 1, line 2	42,166.52	4,644.71
Total assessed	$49,926.10	$7,163.05
Correct tax liability	20,533.10	2,013.95
Overassessment	$29,392.00	$5,151.10

In the determination of this overassessment the grounds set forth in your claim for refund of $7,756.88 have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1108(a) of the Revenue Act of 1928.

(See page 2 attached.)

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:
Respectfully,

Abated: $34,843.10
Credited: $
To Tax. Year
[illegible]-B
Credited: $
To Tax. Year

(Signed) H. D. ROSSELOT
Head of Division.

Refunded: $
Interest: $

Exhibit K.
[illegible]

GENERAL ACCOUNTING OFFICE COPY

232

Form 1774-A—Form approved by Comptroller General, U. S. Oct. 29, 1930. 8-1400a

- 2 -

Mr. C. T. Jaffray and Mr. R. H. M. Robinson, Receivers, Minnesota and Ontario Paper Company.

CERTIFICATE OF OVERASSESSMENT

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 822 of the Revenue Act of 1928.

[illegible]-B

Exhibit K
[illegible]
A-5

233

EXHIBIT K.

191

191

(Name of taxpayer)

RECORD OF ASSESSMENTS AND PAYMENTS

Entries to be made by the Collector according to instructions. Show, in the sixth column, by symbols "D.", "Ab." or "Cr.", the nature of each entry in the eighth column.

List	Year	Month	Answer No. on Page	Answer No. on Line	Amount assessed	Date	Amount	Nature of Transaction
					$		$	
					Total, $		Total, $	

Due date of assessment tax (for any taxable year) to which overpayment was applied as a credit.

Credited to Year 19.....

List	Year	Month	Answer No. on Page	Answer No. on Line	Amount credited	Due date
					$	

Due date of additional tax (1920 and prior years) to which overpayment was applied as a credit.

Credited to Year 19.....

List	Year	Month	Answer No. on Page	Answer No. on Line	Amount credited	Due date
					$	

Date of assessment of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19.....

List	Year	Month	Answer No. on Page	Answer No. on Line	Amount	Date of Assessment
					$	

I CERTIFY that the records of this office are as given above; that I have entered to be prepared on Form 7770-B the full, true, and correct transcript of all accounts of the taxpayer as required by Instructions thereon; that all the amounts have been abated, credited, or certified for refund as shown on the reverse of this form.

.....
Collector of Internal Revenue.

By .....
Deputy Collector.

INTEREST ALLOWANCE
(Entries not to be made by the Collector)

Date	$ Year	$ Month	$ Day	$ Year	$ Month	$ Day	$ Year	$ Month	$ Day	$ Year	$ Month	$ Day
1. Date to which interest was computed												
2. Date additional tax assessed												
3. Payment of tax												
4. Interest												
5. Rebate												
6. Net												

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235 Exhibit L.

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Claim.

To be filed with the Collector where Assessment was made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side,

Collector's Stamp (Date Received)

x Refund of Tax Illegally Collected.

Refund of Amount Paid for Stamps Unused, or Used In Error or Excess.

Abatement of Tax Assessed (Not Applicable to Estate or Income Taxes).

State of Minnesota,
County of Hennepin—ss:

Name of Taxpayer or Purchaser of stamps: C. T. JAFFRAY AND R. H. M. ROBINSON, Receivers for Minnesota and Ontario Paper Company

Business Address: 1100 Builders Exchange Building, (Street) Minneapolis, Minnesota. (City) (State)

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed St. Paul, Minnesota.
2. Period (If for Income Tax, make separate form for each taxable year) from June 1, 1928, to December 31, 1928.
3. Character of Assessment or tax Corporation Income Taxes.
4. Amount of assessment, $7,758.58; dates of payment April 23, 1930.

5. Date stamps were purchased from the Government .....

236 6. Amount to be refunded $7,758.58.

7. Amount to be abated (not applicable to income or estate taxes) $.....

8. The time within which this claim may be legally filed expires, under Section 322 (h) of the Revenue Act of 1928, on April 23, 1932.

The deponent verily believes that this claim should be allowed for the following reasons:

Reference is herewith made to a "Statement of Objections" dated January 27, 1932, filed by C. T. Jaffray and R. H. M. Robinson, Receivers for Minnesota and Ontario Paper Company, against the additional assessment of corporation Income Taxes for years, 1926, 1927 and 1928, and on basis of said statement, the taxpayer is entitled to a refund for the year 1928 amounting to $7,758.58 plus interest thereon as provided by law.

All of the facts recited in said statement are incorporated herein by reference with the same force and effect as if fully rewritten herein.

Signed C. T. JAFFRAY AND R. H. M. ROBINSON, Receivers for Minnesota and Ontario Paper Company,
By C. T. Jaffray,
And
By R. H. M. Robinson.

Sworn to and subscribed before me this 8th day of February, 1932.

E. M. MERRICK,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 12, 1937.

---

237 Exhibit M.

Petition for Order Authorizing Receivers to enter into an Agreement with the Commissioner of Internal Revenue Relating to Income Tax Liability of the Defendant Company and of certain of its Subsidiaries.

In The District Court of The United States In and for The District of Minnesota, Fourth Division.

Wirt Wilson & Company, a corporation, Complainant,
No. 1950. vs. Equity.
Petition No. 102.
Minnesota and Ontario Paper Company, a corporation, Defendant.

Come now C. T. Jaffray and R. H. M. Robinson, as Receivers of Minnesota and Ontario Paper Company, the defendant above named, and represent to and petition the Court as follows:

1. In connection with the income situation of the defendant Company and of certain of its subsidiary companies for the years 1922 to 1928 inclusive, and with respect to the liability of the defendant Company under the tax free covenant of its First Mortgage Indenture of April 1, 1925, and with respect to the tax free covenant in its Five Year Gold Notes, your Receivers since their appointment have carried on almost continuous negotiations with the Commissioner of Internal Revenue of the Treasury Department of the United States, with a view of reaching agreement respecting
238 said matters and as the result of negotiations recently had with said Commissioner of Internal Revenue, your Receivers now report to the Court that in behalf of the receivership estate of the defendant Company and of certain of its subsidiary companies hereinafter named, they have reached an agreement with said Commissioner, the particulars of which are hereinafter set out, subject to the approval of this Court.

2. The subsidiaries of the defendant Company which are parties to the proposed agreement are the following:

> Falls Lumber and Coal Company, The Insulite Company (heretofore known as International Insulation Company), International Lumber Company, Minnesota, Dakota & Western Railway Company, Minnesota Forest Products Company, Rainy River Improvement Company, and Watrous Island Boom Company,

said Companies being hereinafter collectively referred to as "the subsidiary companies".

3. That the Collector of Internal Revenue for the District of St. Paul, Minnesota, acting under the direction of the Commissioner of Internal Revenue on June 11, 1932, filed in these proceedings an intervening complaint wherein it is

alleged that the defendant Company is indebted to said Collector in the amount of $243,635.25, together with interest thereon from and after certain dates therein mentioned. A copy of said intervening complaint is hereto attached marked Exhibit "A" and hereby made a part hereof. The items of said claim as set forth in said Exhibit "A", consist of the following:

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	Year	Principal Amount of Deficiency Asserted.	Interest thereon to date of Assessment.	Total Amount of Claim
Income Taxes	1924	$ 41,851.55	$14,694.77	$ 56,546.32
" "	1925	3,344.96	1,049.03	4,393.99
" "	1926	41,566.02	11,539.98	53,106.00
" "	1927	50,010.72	10,883.84	60,894.56
" "	1928	42,186.52	6,646.71	48,813.23
Withholding Taxes	1930	17,933.21	—	17,933.21
" "	1931	1,947.94	—	1,947.94
Total amount of Amended Claim		$198,820.92	$44,814.33	$243,635.25

4. In addition to the principal amount of the deficiency of $198,820.92 above indicated, the Commissioner of Internal Revenue has also asserted a claim against said International Lumber Company for the year 1923, which claim is now pending before the United States Board of Tax Appeals and bears docket Number 41834.

5. The proposed agreement to be made by your Receivers and the subsidiary companies is hereto attached marked Exhibit "B" and hereby made a part hereof. In addition to the execution and delivery of said agreement Exhibit "B", and as supplementary thereto, it is proposed that there be executed and delivered those certain additional instruments, of which copies are hereto attached, respectively identified as Exhibits "C" to "I" inclusive, said instruments being as follows:

Exhibit "C"—Proposed Stipulation to be filed in the United States District Court, District of Minnesota, Third Division, in the action entitled "Minnesota & Ontario Paper Company, a corporation, vs. L. M. Willcuts, Collector of Internal Revenue", Division Law 2245, covering taxes for the year 1922.

Exhibit "D"—Stipulation in the Board of Tax Appeals on appeal of the International Lumber Company, Docket No. 41384, and relating to the year 1923.

Exhibit "E"—Proposed Stipulation in the Board of Tax Appeals on appeal of Minnesota & Ontario Paper Company, Docket No. 52110, and relating to the year 1924.

240 Exhibit "F"—Proposed Stipulation of the Board of Tax Appeals on appeal of Minnesota & Ontario Paper Company, Docket No. 51134, and relating to the year 1925.

Exhibit "G"—Proposed letter to be signed by the Receivers of the Minnesota and Ontario Paper Company consenting to the assessment of taxes withheld for the years 1930 and 1931.

Exhibit "H"—Proposed Stipulation for dismissal of action of the Minnesota & Ontario Paper Company vs. United States of America, Docket No. K-436, in the Court of Claims of the United States and relating to the Capital Stock Taxes.

Exhibit "I"—Proposed Stipulation for dismissal of action of the International Lumber Company vs. United States of America, Docket No. K-437, in the Court of Claims of the United States and relating to the Capital Stock Taxes.

6. The various proceedings now pending in connection with the taxes above indicated and which will be affected by the execution and delivery of Exhibits "B" to "I" inclusive, are as follows:

Year 1922.

There is pending in the District Court of the United States, for the District of Minnesota, Third Division, as Law Case No. 2245, suit by the defendant Company against Levi M. Willcuts, Collector of Internal Revenue, for the recovery of $66,818.77, plus interest thereon from the date of payment of taxes in 1923. The proposed settlement will result in the allowance of a credit or refund on this item in the amount of $49,318.77, with interest.

Year 1923.

Taxes for this year are now pending on petition filed with the United States Board of Tax Appeals by International Lumber Company as petitioner, bearing Docket No. 41834. The net deficiency asserted by the Commissioner for this year against the defendant Company and the affiliated companies amounts to $12,066.78. Under the terms of the pro-
241 posed agreement, Exhibit "B" and documents supplementary thereto, the deficiency thus asserted against International Lumber Company will be cancelled and the defendant Company will be allowed a credit or refund of $29,427.69, with interest.

Years 1924 and 1925.

The taxes for these years are pending in the United States Board of Tax Appeals on petitions filed by the defendant Company as petitioner, bearing Docket Nos. 51134 and 52110. The Commissioner has asserted deficiencies of $41,851.55 for 1924 and $3,344.96 for 1925. Under the proposed agreement, Exhibit "B", and documents supplementary thereto, the taxpayer will be allowed credits or refunds of $23,904.23 for 1924 and $7,800.00 for 1925, with interest.

Years 1926, 1927 and 1928.

The Commissioner has asserted and assessed deficiencies against the defendant Company for these years as follows:

Year	1926	$41,566.02	(Not	Including	Interest)
"	1927	50,010.72	"	"	"
"	1928	42,166.52	"	"	"
		$133,743.26			

These deficiencies are included in the items shown upon Exhibit "A". Under the proposed agreement, Exhibit "B", these deficiencies will be reduced in the following amounts:

Year	1926	$33,565.47	(Not	Including	Interest)
"	1927	38,965.14	"	"	"
"	1928	12,776.52	"	"	"
		$85,307.13			

Attention is directed to the fact that the agreement, Exhibit "B", reserves to the defendant Company the right to contest the disallowance of the deduction claimed by the defendant Company for the year 1926 in the amount of $790,455.20, representing a payment made on March 22, 1926, to the
242 United States Government in connection with the payment of additional Federal income, war-profits and excess-profits taxes for the years 1917 to 1920 inclusive.

Years 1930 and 1931.

There is included among the items set forth in the intervening complaint of said Collector, Exhibit "A", the following amounts representing taxes withheld by the defendant Company in 1930 and prior to its receivership in 1931, on account of interest paid to its security holders under tax free covenants contained in its securities:

Year 1930	$17,933.21
" 1931	1,947.94

As provided in Exhibit "G" hereto attached, these amounts will be credited against refunds to be allowed the defendant Company for the years 1922 to 1925 inclusive.

7. Attention is directed to the reservation in the agreement, Exhibit "B", whereby the defendant Company and the subsidiary companies may file claims for refund in the event of any payments which may be made by Minnesota, Dakota & Western Railway Company under Section 15a of the Transportation Act of 1920, this section being applicable to the "recapture" liability of common carriers. Legislation now pending in Congress indicates that this Act will be repealed, although it is uncertain whether such appeal will apply retroactively to prior years.

8. Attention is further directed to the fact that the agreement, Exhibit "B", excepts from the matters thereby determined, the liability, if any, of the defendant Company in respect of withholding taxes as provided for in Section 237 of the Revenue Acts of 1921, 1924 and 1926, on account
243 of interest paid by it to its Canadian subsidiary, The Fort Frances Pulp & Paper Company Limited.

9. As regards the several matters to be dealt with under the agreement, Exhibit "B", and Exhibits "C" to "I" inclusive, the understanding between your Receivers and the subsidiary companies on the one hand, and the Commissioner of Internal Revenue on the other hand, is that none of said documents shall become effective except upon condition that each and all of said documents become effective at the same time.

10. It is estimated that the carrying out of the foregoing agreement will result in the allowance of credits or refunds to the defendant Company and the subsidiary companies for the years 1922 to 1925 inclusive, with estimated interest to June 15, 1933, of approximately $168,450.69; and that upon the allowance of such credits or refunds the Commissioner will apply there against deficiencies in income taxes for the years 1926, 1927 and 1928, and withholding taxes for the years 1930 and 1931, together with estimated interest thereon at six (6) per cent per annum to June 15, 1933, totalling approximately $133,188.28, thus resulting in a credit balance due to the defendant Company of approximately $35,262.41; provided, however, that the Commissioner may assert the right to withhold the immediate refund of this amount pending his decision on the liability, if any, of the defendant Company in respect of withholding taxes as provided in Section 237 of the Revenue Acts of 1921, 1924 and 1926 on account of interest paid by it to its Canadian subsidiary, The Fort Frances Pulp & Paper Company, Limited.

244 11. With respect to the years 1926, 1927 and 1928, it is the intention of your Receivers upon the consummation of the transactions provided for in said agreement, Exhibit "B", and supplementary documents, to file claims for refund in connection with the disallowance to the defendant Company of its deduction from income of $790,455.20 paid in 1926, as more particularly hereinabove set out.

12. It is the judgment of your Receivers, after an extended consideration of these matters, in which they have had the advice and counsel of their attorneys and of Mr. A. A. Figen, who has been for many years largely engaged in dealing with tax matters, and who has had charge of the tax matters of the defendant Company and of its subsidiary companies since the year 1927, that the making of the agreement, Exhibit "B", and of the several documents supplementary thereto, is in the best interests of the receivership estate and of the subsidiary companies, and of all parties interested therein, and your Receivers therefore recommend to the Court that they be authorized and empowered to join in the execution and delivery of said Exhibit "B" and "G", and to cause to be executed in their behalf such of the other of said Exhibits as may provide for execution by attorneys representing your Receivers, and to cause the execution and delivery in behalf of the several subsidiary companies of the agreements and documents drawn for their respective signatures, and to execute and deliver such further and additional agreements and stipulations, if any, as in the judgment of your Receivers may be or become necessary or advisable to deal with the foregoing matters, including the right to make such modifications or amendments of the terms and provisions hereinabove referred to, as may be found necessary in the consummation of the matters hereinabove described.

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Wherefore, Your Receivers respectfully pray the Court for an order authorizing and empowering them to join in the execution and delivery of said Exhibits "B" and "G" and to cause to be executed in their behalf such of the other of said Exhibits as may provide for execution by attorneys representing your Receivers, and to cause the execution and delivery in behalf of the several subsidiary companies of the agreements and documents drawn for their respective signatures, and to execute and deliver such other and additional agreements and stipulations, if any, as in the judgment of your Receivers may be or become necessary or advisable to deal with the foregoing matters, including the right to make such modifications or amendments of the terms and provisions hereinabove referred to as may be found necessary in the con-

summation of the transactions hereinabove described, and for such other and further relief as in the judgment of the Court may be deemed proper.

Dated this 10th day of June, 1933.

C. T. JAFFRAY AND R. H. M. ROBINSON,
By R. H. M. Robinson,
As Receivers of Minnesota and Ontario Paper Company, Petitioners.

Cobb, Hoke, Benson, Krause & Faegre,
1260 Northwestern Bank Building,
Minneapolis, Minnesota.

Fowler, Carlson, Farber & Johnson,
815 New York Life Building,
Minneapolis, Minnesota.
Attorneys for Receivers.

246 State of Minnesota,
County of Hennepin.—ss.:

R. H. M. Robinson, being first duly sworn, says that he is one of the Receivers in the above entitled matter; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

R. H. M. ROBINSON.

Subscribed and sworn to before me this 10th day of June, 1933.

LILLIAN LUND,
Notary Public.
Hennepin County, Minn.

(Notarial Seal)

My Commission Expires June 5th, 1935.

---

247 Exhibit "A".

Intervening Complaint of Collector of Internal Revenue, District of Minnesota.

In The District Court of the United States In and for the District of Minnesota, Fourth Division.

Wirt Wilson & Company a corporation, Complainant,
No. 1950. vs. Equity.
Minnesota And Ontario Paper Company, a corporation, Defendant.

Now comes L. M. Willcuts, Collector of Internal Revenue, in the District of Minnesota, and pursuant to the order of

the above named Court made herein the 18th day of September, 1931, entitled "Order Limiting Time for Creditors to File Claims", as and for its complaint in intervention in the above proceeding complains and alleges as follows:

I.

That at the time of the appointment of the Receivers in the above entitled action on February 28, 1931, the above named defendant Minnesota and Ontario Paper Company, a corporation, was justly and truly indebted to intervenor in the sum of $243,635.25, together with interest thereon at the rate of 12 per cent per annum from and since the 12th day of June, 1931, on $60,940.31; 12 per cent per annum from and since the 15th day of June, 1931 on $17,933.21; and 12 per cent per annum from and since the first day of November, 1931 on $162,813.79; and 12 per cent per annum from and since the 15th day of June, 1932, on $1,947.94.

II.

That the consideration for the said claims is as follows:

Section 274		Section 144	
Rev. Act 1924—Add'l Income Tax 1924—	$56,546.32	Rev. Act 1928 Withholding	
Rev. Act 1924—Add'l Income Tax 1925—	4,393.99	Tax 1930—	$17,933.21
Rev. Act 1926—Add'l Income Tax 1926—	53,106.00		
Rev. Act 1926—Add'l Income Tax 1927—	60,894.56	Tax payable at source	
Rev. Act 1928—Add'l Income Tax 1928—	48,813.23	for 1931—	1,947.94

III.

That true and correct copies of all written instruments upon which Intervenor bases his claim are hereto attached and made a part hereof. That a true and correct Bill of Particulars of Intervener's open account (if the claim be based upon an open account) is hereto attached and made a part hereof.

IV.

That no security whatsoever is held for Intervenor's claim.

That this claim is entitled to be paid before all other claims, the priority of the United States for the payment of taxes being fully determined by Section 3466 of the Revised Statutes and Section 64 (a) of the Bankruptcy Act.

And attention is hereby called to Section 3467 of the Revised Statutes which provides that every executor, administrator, or assignee, or other person who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States

from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

V.

That no payments whatsoever have been made upon Intervenor's claim, and the whole amount thereof is justly owing from the said defendant Minnesota and Ontario Paper Company, a corporation, to Intervenor.

Wherefore: Intervenor prays that its claim be established in this proceeding in the sum of $243,635.25, together with interest thereon at the rate of 12 per cent per annum from and since the 12th day of June, 1931, on $60,940.31; 12 per cent per annum from and since the 15th day of June, 1931 on $17,-933.21; 12 per cent per annum from and since the 1st day of November, 1931 on $162,813.79; and 12 per cent per annum from and since the 15th day of June, 1932 on $1,947.94.

(Signed) L. M. WILLCUTS,
L. M. Willcuts, Collector,
Intervenor.

St. Paul, Minnesota.
(Address)

.....
Attorneys for Intervenor.

.....
(Address)

(Verification by Individual.)

State of Minnesota,
County of Ramsey—ss.

L. M. Willcuts, Collector, being duly sworn, deposes and says that he is the Intervenor named in and who executed the foregoing complaint in intervention; that he has read said intervening complaint, knows the contents thereof and states that the same are true of his own knowledge, except as to matters therein stated on information and belief and as to such he believes them to be true.

(Signed) L. M. WILLCUTS,
L. M. Willcuts, Collector of Internal Revenue, District of Minn.

Subscribed and sworn to before me this 10th day of June, 1932.

(Signed) E. M. HEIMBACH,
Notary Public, Ramsey County, Minn.

My Commission expires Oct. 1st, 1932.

(Verification by Intervenor—Corporation)

State of .....,

County of .....—ss.

....., being duly sworn, deposes and says that he is the ..... of the ....., the Intervenor named in and who executed the foregoing complaint in Intervention; that he has read said intervening complaint, knows the contents thereof and states that the same are true of his own knowledge, except as to matters therein stated on information and belief and as to such he believes them to be true.

.....

Subscribed and sworn to before me this ..... day of

....., 1931.

.....

(Verification by Attorney for Intervenor.)

State of .....,

County of .....—ss.

....., being duly sworn, deposes and says that he is the attorney for the Intervenor named in the foregoing complaint; that he has read said intervening complaint, knows the contents thereof and states that the same are true, except as to matters therein stated on information and belief, and as to such he believes them to be true.

.....

Subscribed and sworn to before me this ..... day of

....., 1931.

.....

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Exhibit "B"

Treasury Department
Internal Revenue Service
Form 866-CR
GC:R:ECH-C1-6413

Agreement as to Final Determination of Tax Liability

This Agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between

Name and Address	State of Incorporation	Period
Minnesota & Ontario Paper Company 1100 Builders Exchange, Minneapolis, Minnesota	Maine	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Falls Lumber & Coal Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
International Insulation Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927, 1928
International Lumber Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years, 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Minnesota, Dakota & Western Railway Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Minnesota Forest Products Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Rainy River Improvement Company 1100 Builders Exchange Minneapolis, Minnesota	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927, and 1928
Watrous Island Boom Company 1100 Builders Exchange Minneapolis, Minnesota		Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928

taxpayers affiliated under Section 240 of the Revenue Acts of 1921, 1924 and 1926 and Section 142 of the Revenue Act of 1928, having their principal places of business at the address shown above and the Commissioner of Internal Revenue:

Whereas, there has been a determination of the tax liability of said taxpayers in respect of income tax imposed by the Revenue Acts of 1921, 1924, 1926 and 1928, for each taxable period stated above falling under the provisions of
249 those acts in the sum of

$ 17,500.00 for the calendar year 1922,
$136,925.19 for the calendar year 1923,
$ 47,022.71 for the calendar year 1924,
$ 1,565.77 for the calendar year 1925,
$ 33,565.47 for the calendar year 1926,
$ 38,965.14 for the calendar year 1927, and
$ 20,533.10 for the calendar year 1928.

exclusive of any penalty or interest applicable thereto as provided by law:

Now, This Agreement Witnesseth, that said taxpayers and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if this agreement is approved by the Secretary of the Treasury, or the Under Secretary, within one year from the date this agreement is signed by said taxpayer.

Reserving, however, to the taxpayers the right to contest the disallowance of the deduction claimed for the year 1926 in the amount of $790,455.20, which amount was paid, on March 22, 1926, to the United States Government in connection with the payment of additional Federal income, war-profits and excess-profits taxes for the calendar years 1917 to 1920, inclusive, and which amount the taxpayers contend was deductible as interest on deficiencies in taxes, and/or was deductible as a penalty, which contentions the Government denies, and reserving to the taxpayers the right to any benefit from the reduction in Federal income taxes, for the years 1926, 1927 and 1928, that will result in the event of a final conclusion of the issues favorable to the taxpayers.

Reserving also to the taxpayers expressly any and all rights which might hereafter accrue to them under Section 1107 of the Revenue Act of 1932 or any similar provision hereafter enacted, and it is stipulated that the execution hereof shall not preclude the taxpayers from recovering any refunds specified thereunder,—said Section 1107 relating to payments under Section 15 a of Interstate Commerce Act.

Provided also that nothing in this agreement shall be determinative of the liability of the Minnesota & Ontario Paper Company for the taxes provided in Section 237 of the Revenue

Acts of 1921, 1924, and 1926 on account of interest paid by that company to the Fort Frances Pulp and Paper Company, Limited, A Canadian Corporation, Fort Frances, Ontario.

In Witness Whereof, the Commissioner and the undersigned corporations have subscribed their names to these presents in duplicate.

Signed this ..... day of ....., 1933.

(Seal)

---

252 Exhibit "C".

Stipulation For Dismissal.

In The District Court of The United States for The District of Minnesota, Third Division.

Minnesota and Ontario Paper Company, a corporation, 1100 Builders Exchange Bldg., Minneapolis, Minnesota, Plaintiff,

No. 2245. vs. Law.

Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota, Defendant.

The above-named plaintiff, by its counsel duly authorized in the premises, hereby stipulates and agrees that the foregoing action may be dismissed with prejudice, and at plaintiff's costs.

CARMI A. THOMPSON,
ORVILLE SMITH,
JOSEPH B. SHEPLER,
Attorneys for Plaintiff,
2104 Terminal Tower Building,
Cleveland, Ohio.

June ....., 1933.

---

253 Exhibit "D".

Stipulation.

United States Board Of Tax Appeals.

International Lumber Company, 1100 Builders Exchange Bldg., Minneapolis, Minnesota, Petitioner,

Docket No. 41834. vs.

Commissioner Of Internal Revenue, Respondent.

It is hereby stipulated and agreed by and between the parties hereto, by and through their respective attorneys of

record, that the following is a statement of the tax liabil of Minnesota and Ontario Paper Company and its affiliat corporations for the year 1923:

Tax assessed and paid	—	$166,352.88
Tax Liability	—	136,925.19
Overpayment for 1923	—	$ 29,427.69

It is further stipulated and agreed that the Board ma enter its order of redetermination in accordance with th stipulation.

CARMI A. THOMPSON,
ORVILLE SMITH,
Counsel for Petitione

....,
Counsel for Respondent

---

254 Exhibit "E".

Stipulation.

United States Board Of Tax Appeals.

Minnesota and Ontario Paper Company, 1100 Builders Exchange Bldg., Minneapolis, Minnesota, Petitioner,
Docket No. 52110. vs.
Commissioner Of Internal Revenue, Respondent.

It is hereby stipulated and agreed by and between th parties hereto, by and through their respective attorneys of record, that the following is a statement of the tax liability of this petitioner and its affiliated companies for the yea 1924:

Tax assessed and paid	—	$70,926.94
Tax liability	—	47,022.71
Overpayment for 1924	—	$23,904.23

It is further stipulated and agreed that the Board ma enter its order of redetermination in accordance with thi stipulation.

CARMI A. THOMPSON,
ORVILLE SMITH,
Counsel for Petitioner

....,
Counsel for Respondent

---

255 Exhibit "F".

Stipulation.

United States Board of Tax Appeals.

Minnesota And Ontario Paper Company, 1100 Builders Exchange Bldg., Minneapolis, Minnesota, Petitioner,
Docket No. 51134. vs.
Commissioner of Internal Revenue, Respondent.

It is hereby stipulated and agreed by and between the parties hereto, by and through their respective attorneys of record, that the following is a statement of the tax liability of this petitioner and its affiliated companies for the year 1923.

Tax assessed and paid	—	$9,365.77
Corrected tax	—	1,565.77
Overpayment	—	$7,800.00

It is further stipulated and agreed that the Board may enter its order of redetermination in accordance with this stipulation.

CARMI A. THOMPSON,
ORVILLE SMITH,
Counsel for Petitioner.

.....
Counsel for Respondent.

256 Exhibit "G".

June ....., 1933.

Commissioner of Internal Revenue,
Washington, D. C.

Dear Sir:

Referring to the Final Closing Agreement (From 866-CR) executed by the undersigned and other parties and submitted herewith,—the undersigned hereby stipulate and agree that there have been withheld by the Minnesota and Ontario Paper Company, income taxes for the holders of bonds of said company to whom said company has paid interest on its tax-free covenant bonds, in the following amounts:

For 1930	—	$17,933.21
For 1931	—	1,947.94
Total	—	$19,881.15

The undersigned receivers hereby admit liability therefor and consent to the payment thereof, with interest at six per

cent. (6%) from the respective due dates thereof,—such payment to be made by the application of credit thereto of an equal amount of overpayments of income taxes by the Minnesota and Ontario Paper Company for the taxable years 1922 to 1925, both inclusive.

C. T. JAFFRAY and R. H. M. ROBINSON,
Receivers for the Minnesota and Ontario Paper Company.

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257 Exhibit "H".

Stipulation For Dismissal.

In the Court of Claims of the United States.

Minnesota And Ontario Paper Company, 1100 Builders Exchange Bldg., Minneapolis, Minnesota, Plaintiff,
Docket No. K-436. vs.
United States of America, Respondent.

The above-named plaintiff, by its counsel duly authorized in the premises, hereby stipulates and agrees that the foregoing action may be dismissed with prejudice, and at plaintiff's costs.

THOMPSON AND SMITH,
Attorneys for Plaintiff,
2104 Terminal Tower Bldg.,
Cleveland, Ohio.

June ....., 1933.

---

258 Exhibit "I".

Stipulation for Dismissal.

In the Court of Claims of the United States.

International Lumber Company, 1100 Builders Exchange Bldg., Minneapolis, Minnesota, Plaintiff,
Docket No. K-437. vs.
United States of America, Respondent.

The above-named plaintiff, by its counsel duly authorized in the premises, hereby stipulates and agrees that the foregoing action may be dismissed with prejudice, and at plaintiff's costs.

THOMPSON AND SMITH,
Attorneys for Plaintiff,
2104 Terminal Tower Bldg.,
Cleveland, Ohio.

June ....., 1933.

---

259 Exhibit N.

Order Authorizing Receivers to Enter Into an Agreement With the Commissioner of Internal Revenue Relating to Income Tax Liability of the Defendant Company and of Certain of its Subsidiaries.

In the District Court of the United States in and for the District of Minnesota, Fourth Division.

Wirt Wilson & Company, a corporation, Complainant,
No. 1950. vs. Equity.
Order No. 102.
Minnesota And Ontario Paper Company, a corporation, Defendant.

Messrs. C. T. Jaffray and R. H. M. Robinson, as Receivers of Minnesota and Ontario Paper Company, the defendant above named, having made and filed in these proceedings their verified petition for order authorizing said Receivers to enter into an agreement with the Commissioner of Internal Revenue relating to income tax liability of the defendant Company and of certain of its subsidiaries, and the Court having read and considered said petition and being fully advised in the premises, and on motion of counsel for the Receivers,

It Is Hereby Ordered That said Receivers be and they are hereby authorized and empowered to execute and deliver those certain documents of which Exhibits "B" and "G" hereto attached are copies, and to cause to be ex-
260 ecuted in their behalf by their attorneys in said matters, and in behalf of Minnesota and Ontario Paper Company those certain documents of which Exhibits "C", "E", "F" and "H" hereto attached are copies, and to cause the execution and delivery by and in behalf of the several subsidiary companies of that certain document hereto attached marked Exhibit "B", and to cause to be executed by the attorneys for International Lumber Company, those certain documents of which Exhibits "D" and "I" hereto attached are copies. The foregoing authorization to said Receivers is subject to the conditions, First, that in computing interest on overpayments of income taxes for the years 1922 to 1925, inclusive, and on deficiencies in income taxes for the years 1926 to 1928, inclusive, resulting from the execution of said Exhibit "B", and in computing interest on the liability for withholding taxes for 1930 and 1931, mentioned in said Exhibit "G", such interest shall be uniformly computed

at the rate of six (6) per cent per annum on the principal amounts of said overpayments and deficiencies, and not at the rate of twelve (12) per cent per annum, as stated in the intervening complaint filed by the Collector of Internal Revenue at St. Paul, Minnesota, a copy of which is hereto attached marked Exhibit "A"; Second, that said Collector in behalf of the Commissioner of Internal Revenue, shall cause to be filed in these proceedings a dismissal of said intervening complaint; Third, that none of said documents (Exhibits "B" to "I" inclusive) hereinabove referred to, shall become effective except upon condition that each and all of said documents become effective at the same time.

It Is Further Ordered that said Receivers be and they hereby are authorized and empowered to execute and deliver such further and additional agreements and stipula-
261 tions, if any, as in the judgment of your Receivers may be or become necessary or advisable to deal with the matters herein referred to, including the right to make such modifications or amendments of the terms and provisions of the several Exhibits attached hereto as may in their judgment be necessary in the consummation of the matters hereinabove referred to.

Dated this 10th day of June, 1933.

By The Court:

JOSEPH W. MOLYNEAUX,
Judge.

---

262 Exhibit O.

Treasury Department
Internal Revenue Service
Form 866-CR
GC:R:ECH—C1—6413

Agreement as to Final Determination of Tax Liability

This Agreement, Made in Duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between

Name and Address	State of Incorporation	Period
Minnesota & Ontario Paper Company 1100 Builders Exchange Minneapolis, Minnesota.	Maine	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Falls Lumber & Coal Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928

International Insulation Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927, 1928
International Lumber Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927, 1928
Minnesota, Dakota & Western Railway Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Minnesota Forest Products Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Rainy River Improvement Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928
Watrous Island Boom Company 1100 Builders Exchange, Minneapolis, Minnesota.	Minnesota	Calendar years 1922, 1923, 1924, 1925, 1926, 1927 and 1928

taxpayers affiliated under Section 240 of the Revenue Acts of 1921, 1924 and 1926 and Section 142 of the Revenue Act of 1928, having their principal places of business at the address shown above and the Commissioner of Internal Revenue:

Whereas, there has been a determination of the tax liability of said taxpayers in respect of Income Tax imposed by the Revenue Acts of 1921, 1924, 1926 and 1928, for each taxable period stated above falling under the provisions of those acts in the sum of

$ 17,500.00 for the calendar year 1922,
$136,925.19 for the calendar year 1923,
$ 47,022.71 for the calendar year 1924,
$ 1,565.77 for the calendar year 1925,
$ 33,565.47 for the calendar year 1926,
$ 38,965.14 for the calendar year 1927, and
263 $ 20,533.10 for the calendar year 1928.

exclusive of any penalty or interest applicable thereto as provided by law:

Now, this agreement witnesseth, that said taxpayers and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if this Agreement is approved by the Secretary of the Treasury, or the Under Secretary within one year from the date this Agreement is signed by said taxpayers.

Reserving, However, to the taxpayers the right to contest the disallowance of the deduction claimed for the year 1926 in the amount of $790,455.20, which amount was paid, on March 22, 1926, to the United States Government in connection with the payment of additional Federal income, war-profits and excess-profits taxes for the calendar years 1917 to 1920, inclusive, and which amount the taxpayers contend was deductible as interest on deficiencies in taxes, and/or was deductible as a penalty, which contentions the Government denies, and reserving to the taxpayers the right to any benefit from the reduction in Federal Income taxes, for the years 1926, 1927 and 1928, that will result in the event of a final conclusion of the issues favorable to the taxpayers.

Reserving also to the taxpayers expressly any and all rights which might hereafter accrue to them under Section 1107 of the Revenue Act of 1932 or any similar provision hereafter enacted, and it is stipulated that the execution hereof shall not preclude the taxpayers from recovering any refunds specified thereunder,—said Section 1107 relating to payments under Section 15 a of Interstate Commerce Act.

Provided also that nothing in this agreement shall be determinative of the liability of the Minnesota & Ontario Paper Company for the taxes provided in Section 237 of the Revenue Acts of 1921, 1924, and 1926 on account of interest paid by that company to the Fort Frances Pulp and Paper Company, Limited, a Canadian Corporation, Fort Frances, Ontario.

In Witness Whereof, the Commissioner and the undersigned corporations have subscribed their names to these presents in duplicate.

Signed this 12 day of June, 1933.

(Seal)

MINNESOTA AND ONTARIO
PAPER COMPANY,
(Parent)

By C. T. Jaffray,

C. T. Jaffray,

By R. H. M. Robinson,

R. H. M. Robinson,

By .....,

Receivers.

Signed this 12 day of June, 1933.

(Seal)

FALLS LUMBER & COAL COMPANY,
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By C. S. Pope, Secretary.
(Signature and Title)

Signed this 12 day of June, 1933.

264 (Seal)

THE INSULITE COMPANY, formerly the International Insulation Company.
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By C. S. Pope, Secretary.
(Signature and Title)

Signed this 12 day of June, 1933.

(Seal)

INTERNATIONAL LUMBER COMPANY,
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By C. S. Pope, Secretary.
(Signature and Title)

Signed this 12 day of June, 1933.

(Seal)

MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY,
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By A. A. Figen, Secretary.
(Signature and Title)

Signed this 12 day of June, 1933.

(Seal)

MINNESOTA FOREST PRODUCTS COMPANY,
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By C. S. Pope, Secretary.
(Signature and Title)

Signed this 12 day of June, 1933.

(Seal)

RAINY RIVER IMPROVEMENT COMPANY,
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By C. S. Pope, Secretary.
(Signature and Title)

265

Signed this 12 day of June, 1933.

(Seal)

WATROUS ISLAND BOOM COMPANY,
(Subsidiary)
By R. H. M. Robinson, Vice President.
(Signature and Title)
By C. S. Pope, Secretary.
(Signature and Title)

Signed this 7 day of July, 1933.

GUY T. HELVERING,
Commissioner of Internal Revenue.

The above agreement has been approved by the Secretary of the Treasury, or the Under Secretary, in accordance with the provisions of Section 606 of the Revenue Act of 1928, the approval being specifically enumerated on Schedule No. 6829.

Dated Jul. 7, 1933.

TREASURY DEPARTMENT

OFFICE OF

COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

INCOME TAX UNIT

IT:A:R:D-7
VED

CERTIFICATE OF OVERASSESSMENT

Number: 2011190

Allowed: $49,318.77

Schedule No. 50519

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1928 indicates that the tax assessed for that year was in excess of the amount due:

Income tax assessed:

Original, June 1929, #400074	$66,818.77
Correct income tax liability	None
Overassessment	$66,818.77
Barred by statute of limitations	17,500.00
Overassessment allowable	$49,318.77

(See page 2 attached)

Reg. ltr. mailed 6/4/27

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

~~Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.~~

By direction of the Deputy Commissioner:

Respectfully,

Abated: $ 42,884.00

Credited: $ Addtl. 1926
To Tax. Year

6,434.77

Credited: $ Addtl. 1927
To Tax. Year

Tent. Int.
Credited: $24,034.76
To Tax. Year Addtl. 1921

Refunded: $

Interest: $

(Signed) H. H. ROBINSON
Head of Division.

ves-3

Exhibit P

GENERAL ACCOUNTING OFFICE COPY

Form 7776 A Form approved by Comptroller General, U. S. Oct. 25, 1926.

a 6 (4)

256

-2-

C. T. Jaffray and R. H. M. Robinson,
Receivers.

CERTIFICATE OF OVERASSESSMENT.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

In the determination of this overassessment the grounds set forth in your claim for refund of $66,818.77 have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1105(a) of the Revenue Act of 1932.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

Exhibit P

ves-3

257

a-7

EXHIBIT P.

219

Schedule 07-7 C. T. Jaffray & R. H. M. Robinson, receivers Tax Year
FT-A-4 50519 for Minnesota & Ontario Power Co., (Name of taxpayer) 1922

423

RECORD OF ASSESSMENTS AND PAYMENTS

Entries to be made by the Collector according to instructions. Show, in the ninth column, by symbols "Pd.", "Ab." or "Cr.", the nature of each entry in the eighth column.

Character of assessment and period covered	List	Year	Month	Assessment No. or Page	Assessment No. or Line	Amount assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.
INCOME TAX Corp.	1923		June	Jn400074		$ 66818 77	3/15-23	$ 17500 00	Pd.
							6/16-23	15909 39	Pd.
							9/15-23	16704 70	Pd.
							12/15-23	16704 68	Pd.
Tents. Int. Cr. as below.									
					Total.	$ 66818 77		Total. 66818 77	

Date of ~~refund~~ tax due any taxable year to which overpayment was applied as a credit.

Credited to Year 19 21

List	Year	Month	Assessment No. or Page	Assessment No. or Line
1933		July Spec	$2	ooc

Amount credited		Due date
Int on Sup. $	24034	76 7/10-33

Due date of additional tax ~~[illegible]~~ to which overpayment was applied as a credit

Credited to Year 19 26

List	Year	Month	Assessment No. or Page	Assessment No. or Line
1931		Oct.	#5	10C

Amount credited		Due date
$	42884	00 10/31-31

Date of assessment of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19 27

List	Year	Month	Assessment No. or Page	Assessment No. or Line
1931		Oct.	#5	11C

Amount credited		Date of assessment
$	6334	77 10/31-31

I CERTIFY that the records of this office are as given above; that I have caused to be prepared on Form 7776 B the full, true, and correct transcript of all accounts of the taxpayer as required by instructions thereon; and that the amounts have been allowed, credited, or certified for refund as shown on the reverse of this form.

L. M. Willentz
Collector of Internal Revenue.

By Florence Baechler
Deputy Collector.

INTEREST ALLOWANCE (Entries and to be made by the Collector)	$ 15909.39 / 50246.57	$ 16704.70 / 48763.01	$ 16704.68 / 47763.01

Items	Year	Month	Day	Year	Month	Day	Year	Month	Day	Year	Month	Day
1. Date to which interest was computed												
2. Date additional tax assessed	31	10	31	31	10	31	31	10	31			
3. Payment of tax	23	6	16	23	9	15	23	12	15			
4. Interest period	8	4	15	8	1	16	7	10	16			
	$ 7003	92		$ 8145.71			$ 7855	19		$		

TREASURY DEPARTMENT

OFFICE OF

COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

INCOME TAX UNIT

2243

EXHIBIT Q.

IT:AR:D-7
SED

CERTIFICATE OF OVERASSESSMENT

Number 3014378

Allowed: $29,427.69

Schedule No.

C. T. Jaffray and E. H. H. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

50519 27

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1923 indicates that the tax assessed for that year was in excess of the amount due:

Income tax assessed:	
Original, June 1924, $400066	$166,362.88
Correct income tax liability	136,935.19
Overassessment	$ 29,427.69

Pay as filed 7-24-27

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

In the determination of this overassessment the grounds set forth in your claim for refund of $110,241.61, and your two claims for refund of $86,356.86, each, have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

The overassessment shown herein is in accordance with a recommendation by the General Counsel as the result of a settlement agreement between that office and the taxpayer and is in full settlement of both tax and interest.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

~~Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.~~

By direction of the Deputy Commissioner:

Respectfully,

(Signed) W. [illegible]

Head of Division.

Abated: $

Credited: $ 29,427.69
To Tax. Year Addtl. 1927

Trust, Int.
Credited: $ 1,235.60
To Tax. Year Addtl. 1921

Trust Fund.
Credited: $ 10,907.06
To Tax. Year 1922

Refunded: $

Interest: $

Enclosure

GENERAL ACCOUNTING OFFICE COPY

259

Form 7776-A - Form 6, [illegible] by Comptroller General, U. S. Oct. 20, 1926.

R-9(4)

FT-A-4 50519 "Innesota & Ontario Paper Co. (Name of taxpayer) , 19 33

RECORD OF ASSESSMENTS AND PAYMENTS

Entries to be made by the Collector according to instructions. Show, in the ninth column, by symbols "Pd.", "Ab." or "Cr.", the nature of each entry in the eighth column.

Character assessed and period covered	List	Year	Month	Account No. of Page	Account No. of Line	Amount assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.
INCOME TAX Corp.	1924		June	In400056		$ 166352 88	3/15-24	$ 58000 00	Pd.
							6/16-24	25176 44	Pd.
							9/15-24	41588 22	Pd.
							12/15-24	41588 22	Pd.
Tent. Int. Cr. to Addtl. for 1921 & 1922						Total. $ 166352 88		Total. $ 166352 88	

Due date of additional tax (for any taxable year) to which overpayment was applied as a credit.

Credited to Year 19 21

List	Year	Month	Account No. of Page	Account No. of Line	Amount credited	Due date
1933	July	Spec.	$13	00C	$ 1235 69	7/10-33

Due date of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19 22

List	Year	Month	Account No. of Page	Account No. of Line	Amount credited	Due date
1933	July	Spec.	$1	-01	$ 10907 06	7/10-33

Date of assessment of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19 27

List	Year	Month	Account No. of Page	Account No. of Line	Amount credited	Date of assessment
1931	Oct.		$5	110	$ 29427 69	10/31-31

I CERTIFY that the records of this office are as given above; that I have caused to be prepared on Form 7776-B the full, true, and correct transcript of all accounts of the taxpayer as required by instructions thereon; and that the amounts have been abated, credited, or certified for refund as shown on the reverse of this form.

L. H. Willcutt
Collector of Internal Revenue.

By Florence Buechler
Deputy Collector.

INTEREST ALLOWANCE (Entries not to be made by the Collector)

$29427.69
$1716.01

Date	Year	Month	Day	Year	Month	Day	Year	Month	Day	Year	Month	Day
1. Date to which interest was computed												
2. Date additional tax assessed	31	10	31									
3. Payment of tax	24	12	15									
4. Interest period	6	10	16									
5. Interest allowance	$			$			$			$		
6. Total interest	$ 1242	75										

Date of computation Entered 7/7/33

270

TREASURY DEPARTMENT
OFFICE OF
COMMISSIONER OF INTERNAL REVENUE
WASHINGTON

EXHIBIT R.

277

IT:AR:D-7
NED

CERTIFICATE OF OVERASSESSMENT

Number: 2030108

Allowed: $ 80,680.88

Schedule No. 50519

Mr. C. T. Jaffray and Mr. R. H. H. Robinson,
Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

An audit of your income tax return, Form 1120 and a consideration of all the claims (if any) filed by you for the calendar year 1926 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original account, June. #400180	$70,926.94	
Additional, June 6, 1931. list #1, page 2, line 0	41,851.55	$14,684.77
Total assessed	$112,778.49	$14,684.77
Correct income tax liability	47,032.71	None
Overassessment	$ 65,745.78	$14,684.77

In the determination of this overassessment the grounds set forth in your claims for refund of $36,904.60, $29,883.76, and $49,670.56 have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

(See page 2 attached.)

Rej. & filed 12/24/37

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

~~Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.~~

By direction of the Deputy Commissioner:
Respectfully,

Abated: $ 56,546.32
Credited: $ 11,582.66
To Tax. Year Addtl. 1927

Credited: $ 12,321.87
To Tax. Year Addtl. 1928

Treas. Int.
Credited: $8,821.94
To. Tax. Year Addtl. 1922

(Signed) H. H. ROBINSON
Head of Division.

Refunded: $
Interest: $

Exhibit R

277

GENERAL ACCOUNTING OFFICE COPY

a-1019

Form 7716 A—Form approved by Comptroller General, U. S. Oct. 31, 1928.

IT-A-4 50519 Minnesota & Ontario Paper Co. , 19 24

RECORD OF ASSESSMENTS AND PAYMENTS

329

Entries to be made by the Collector according to instructions. Show, in the sixth column, by symbols "Pd.", "Ab." or "Cr.", the nature of each entry in the eighth column.

Character of assessment and period covered	List	Year	Month	Assessment No. 04 Page	Assessment No. 04 Line	Amount assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.
INCOME TAX									
Corp.	1925		June	Jn400150		$ 70926 94	3/16-25	$ 15000 00	Pd.
					Int.	30 97	6/18-25	20463 47	Pd.
							6/26-25	30 97	Pd.
							9/15-25	17731 74	Pd.
							12/15-25	17731 73	Pd.
	1931		June	#1	20C	41851 55	Being	56546 32	Assess'g
					Int.	14694 77	abated		
Tent. int .Cr. to addtl. 1932					Total.	$ 127504 23 ✓	Total.	$ 127504 23 ✓	

Due date of tax (for any taxable year) to which overpayment was applied as a credit.

Credited to Year 19 22

List	Year	Month	Assessment No. 04 Page	Assessment No. 04 Line	Amount credited	Due date
1933	July	Spec.	#1-01C		$ 8521 94	7/10-33

Due date of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19 27

List	Year	Month	Assessment No. 04 Page	Assessment No. 04 Line	Amount credited	Due date
1931		Oct.	#5	11C	$ 11582 66	10/31-31

Date of assessment of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 19 28

List	Year	Month	Assessment No. 04 Page	Assessment No. 04 Line	Amount credited	Date of assessment
1931		Oct.	#5	12C	$ 12321 57	10/31-31

I CERTIFY that the records of this office are as given above; that I have caused to be prepared on Form 2776 H a full, true, and correct transcript of all accounts of the taxpayer as required by instructions thereon; and that the amounts have been abated, credited or certified for refund as shown on the reverse of this form.

L. M. Willcuts, Collector of Internal Revenue. By Florence Baechler, Deputy Collector

INTEREST ALLOWANCE (Entries not to be made by the Collector)	$ 6172.50	$ 17731.73	$	$
	.3676302	.3526301 ✓		

Items	Year	Month	Day	Year	Month	Day	Year	Month	Day	Year	Month	Day
1. Date to which interest was computed												
2. Date additional tax assessed	31	10	31 ✓	31	10	31 ✓						
3. Payment of tax	25	9	15 ✓	25	12	15 ✓						
4. Interest period	6	1	16 ✓	5	10	16 ✓						
5. Interest allowance	$ 2269	20		$ 6252	74		$			$		
6. Total interest	$ 8521	94										

Date of computation: Claim R 8/9/33 D.I.W.

272 Internal Revenue

TREASURY DEPARTMENT
OFFICE OF
COMMISSIONER OF INTERNAL REVENUE
WASHINGTON

INCOME TAX UNIT

IT:AR:B-7
WED

CERTIFICATE OF OVERASSESSMENT

Number: 2029728

Allowed: $ 12,193.99

Schedule No. 50519

C. T. Jaffray and R.H.H. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

Sirs:

Suppl

An audit of your income tax return, Form 1120
and a consideration of all the claims (if any) filed by you for the
calendar year 1926 indicates that the tax
assessed for that year was in excess of the amount due:

	Income Tax	Interest
Income tax assessed:		
Original, June 1926, $400,220	$ 9,366.77	
Additional, June 6, 1931, list #1, page 2, line 1	3,344.96	$1,049.03
Total assessed	$12,710.73	$1,049.03
Correct income tax liability	1,565.77	None
Overassessment	$11,144.96	$1,049.03

Rejected filed 12/24/27

(See page 2, attached)

JBW-3

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

~~Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.~~

By direction of the Deputy Commissioner:
Respectfully,

(Signed) H H ROBINSON
Head of Division.

Abated: $4,325.99
Credited: $8,861.44
To Tax. Year Addtl. 1921

Credited: $1,948.56
To Tax. Year Addtl. 1928

Refunded: $
Interest: $

Test. Int.
Credited: $2,831.28
To Tax. Year Addtl. 1922

Addl. Int.
Credited: $396.08
To Tax. Year Addtl. 1922

Exhibit S
p.

GENERAL ACCOUNTING OFFICE COPY

a-12

- 2 -

C. T. Jaffray and R.H.H. Robinson, Receivers, Minnesota and Ontario Paper Company. CERTIFICATE OF OVERASSESSMENT.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 284(b) of the Revenue Act of 1926.

In the determination of this overassessment the grounds set forth in your claims for refund of $8,815.30, $6,401.49, and $5,400.75, have been given careful consideration and to the extent disallowed, official notice will be issued by registered mail in accordance with section 1105(a) of the Revenue Act of 1932.

This overassessment is in accordance with the decision of the United States Board of Tax Appeals dated June 22, 1933, Docket #61134.

Exhibit S

JBW-3

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a-13

EXHIBIT S.

231

(Name of taxpayer) ..... 19..25.

RECORD OF ASSESSMENTS AND PAYMENTS

233

Entries to be made by the Collector according to instructions. Show, in the ninth column, by symbols "Pd.", "Ab." or "Cr.", the nature of each entry in the eighth column.

Character of assessment and period covered	List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.
INCOME TAX Cont.		1926	June	Jn400220		$ 9365 77	3/15-26	$ 10000 00	Pd.
					Cr.	634 23	Trf. to ex. coll		
						ck #1022809	dated 10/14-26		
		1931	June	#1	21C	3344 96	Being abated	4393 99	F50519
					Int.	1049 03			
(Tent. int.cr. to addtl. 1922) addtl.									
					Total.	$ 14393 99	Total.	$ 14393 99	

Due date of ~~assessment~~ (for any taxable year) to which overpayment was applied as a credit.

Credited to Year 1922

List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount credited	Due date
1933	July	Spec.	#1-02C		$ 2831 25	7/10-33
					996 06	7/10/33 Int on Asmt F50519

Due date of additional tax (~~for the year~~) to which overpayment was applied as a credit.

Credited to Year 1921

List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount credited	Due date
1933	July	Spec.	#1-00C		$ 5851 44	7/10-33

Date of assessment of additional tax (1921 and later years) to which overpayment was applied as a credit.

Credited to Year 1928

List	Year	Month	Assessment No. on Page	Assessment No. on Line	Amount credited	Date of assessment
1931		Oct.	#5	12C	$ 1948 56	10/31-31

I CERTIFY that the records of this office are as given above; that I have caused to be prepared on Form 7776 B the full, true, and correct transcript of all accounts of the taxpayer as required by instructions thereon; and that the amounts have been abated, credited, or certified for refund as shown on the reverse of this form.

L M Willcuts
Collector of Internal Revenue.

By Florence Baechler
Deputy Collector.

INTEREST ALLOWANCE
(Entries not to be made by the Collector)

	$ 1948.56			$ 5851.44			$			$		
	.337690			.439109								
Date	Year	Month	Day	Year	Month	Day	Year	Month	Day	Year	Month	Day
1. Date to which interest was computed												
2. Date additional tax assessed	31	10	31	33	7	10						
3. Payment of tax	26	3	15	26	3	15						
4. Interest period	5	7	16	7	3	25						
5. Interest allowance	3277	81		2569	42		$			$		
6. Total interest	$ 2871 25			Date of computation 7/26/33			E.T.W. Examiner					

$96.06

332

EXHIB

To Comptroller General AUG 12 1933
List 5218

Form 2778
TREASURY DEPARTMENT
U. S. INTERNAL REVENUE BUREAU
Form approved by Comptroller General U. S.
September 21, 1929

SCHEDULE OF OVERASSESSMENTS

ABATEMENTS, CREDITS, AND REFUNDS

INCOME TAX UNIT

Schedule No. IT- 50519

Sheet 1 of

District of MINNESOTA

Disbursing Clerk Voucher No.

CERTIFICATE OF DEPUTY COMMISSIONER

To the Commissioner of Internal Revenue:

The tax liability of the respective taxpayers herein listed has been determined in accordance with applicable laws and the law. The overassessments or reductions of tax liability indicated in column 3, or amounts refundable listed in column 7, are accordingly recommended for allowance.

Date JUL 13 1933

Elmer J. Russell
Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

This schedule must be adjusted and all required steps taken IMMEDIATELY.

The amounts listed in column 3 as overassessments (or reductions of tax liability) are hereby approved and allowed in the respective amounts indicated, if any.

The COLLECTOR will immediately check such items against the accounts of the taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part and make such abatements as may be warranted by the condition of the taxpayer's accounts for the years involved. If any part of any such item is found to be an overpayment, the Collector will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against income, war profits, or excess profits taxes due, if any, making the appropriate entries in his accounts. The amounts credited will be entered by the Collector in column 6. The balance, if any, of the overpayment refundable will be entered in column 7 and an appropriate MEMORANDUM made upon the taxpayer's account showing the refund and the amount refunded. The Collector will thereupon complete and certify this schedule and return the same, with the necessary copies, to the Commissioner of Internal Revenue.

The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.

The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.

Date JUL 13 1933

Guy T. Helvering
Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items on this schedule have been checked against the accounts of the respective taxpayers concerned. Abatements and credits in their amounts have been applied in the amounts indicated, and not amounts refundable have been determined as shown in column 7.

Date JUL 20 1933

M. Willcuts
Collector. District of MINNESOTA

Sequence of Items Numbers (a)	Name of Taxpayer (b)	Overassessment or Reduction of Tax Liability (Abated) (c)		Tax Liability Year (d)	(Entries to be made by the Collector) Amount Abated (e)		Amount Credited to Other Taxes Due (f)		Net Amount Refundable (g)	Claims to Be Paid by the Deputy Commissioner REFUNDING TAXES ILLEGALLY COLLECTED Interest Refund and Credit (h)	Amount to be Paid 19__ and Prior Years (i)	Amount to be Paid 19__ (j)	Paid by Disbursing Clerk, Treas. Dept., or Checks Issued: Number and Amount (k)		Date
X X	TOTALS OF 11 ITEMS ON THIS SCHEDULE,			X									X X		X X
1316756	MINNESOTA & ONTARIO PAPER CO	10222	00	26	10222	00									
1316757	MINNESOTA & ONTARIO PAPER CO	13449	44	27	13449	44									
2823612	MINNESOTA & ONTARIO PAPER CO	34543	10	28	34543	10									
2811190	MINNESOTA & ONTARIO PAPER CO	49318	77	22			49318	77							
2814278	MINNESOTA & ONTARIO PAPER CO	29427	69	23			29427	69							
[illegible]	MINNESOTA & ONTARIO PAPER CO	80450	55	24	56586	32	[illegible]								
[illegible]	MINNESOTA & ONTARIO PAPER CO	12193	99	25	4383	99	[illegible]								
		INTEREST													

EXHIBIT T.

Controller General AUG 12 1933

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Schedule No. IT- 50519

Sheet 1 of _____ sheets

District of MINNESOTA

Disbursing Clerk Voucher No. _____

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items on this schedule have been checked against the accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts indicated, and no exempt schedules have been determined as shown in column 7.

Date JUL 20 1933

M. Williams

Collector District of MINNESOTA

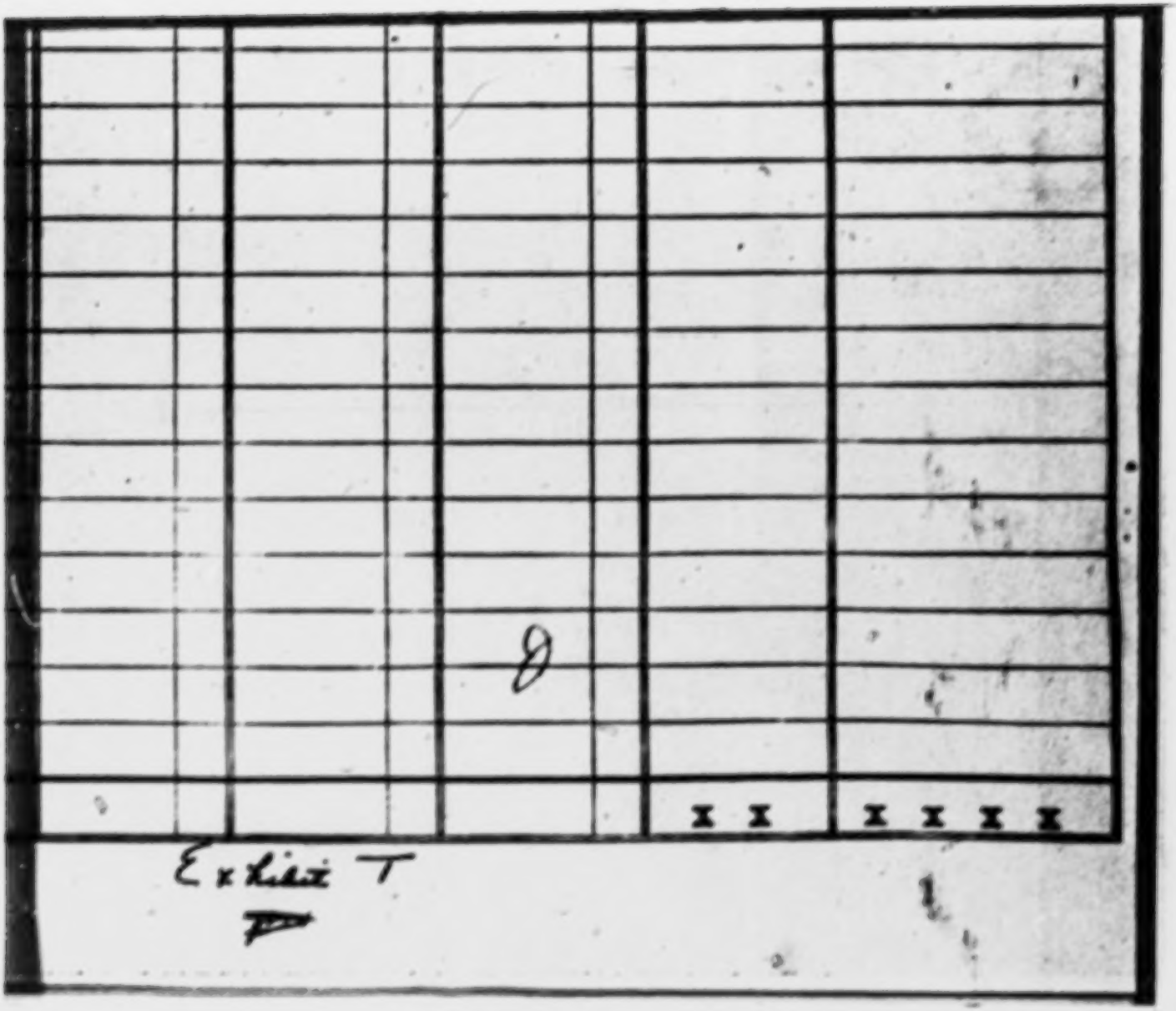
INITIALS	DATE

To be filled in by the Deputy Commissioner) AMOUNT ILLEGALLY COLLECTED				PAID BY DISBURSING CLERK, TREAS. DEPT., BY CHECK DATED _____ NUMBERED AS FOLLOWS (12)	REMARKS (13)
AMOUNT TO BE PAID 19____ PRIOR YEARS (9)		AMOUNT TO BE PAID 19____ (10)			
				X X	X X X X

	MINNESOTA & ONTARIO PAPER CO	12193	99	25	4393	99	7800	00											
		INTEREST ALLOWED					CREDITED												
2011190	MINNESOTA & ONTARIO PAPER CO	24034	76	22			24034	76											
2014278	MINNESOTA & ONTARIO PAPER CO	12142	75	23			12142	75											
2030102	MINNESOTA & ONTARIO PAPER CO	8521	94	24			8521	94											
2029738	MINNESOTA & ONTARIO PAPER CO	1975 855	62 63	25			1975 855	62 63											
	PAGE TOTALS ONLY,	27736	24	X	119154	85	157981	39										X X	X X

Exhibit T

a-1


8
X X
X X X X
Exhibit T

To Comptroller General AUG 12 1933

SCHEDULE OF OVERASSESSMENTS

List · 5218

SUPPLEMENTAL Schedule No. IT- 50519

ABATEMENTS, CREDITS, AND REFUNDS

INCOME TAX UNIT

Sheet 1 of

District of MINNESOTA

Disbursing Clerk Voucher No.

AUTHORIZATION OF COMMISSIONER

This schedule must be adjusted and all required steps taken IMMEDIATELY.

The amounts listed in column 5 as overassessments (or reductions of tax liability) are hereby approved and allowed in the respective amounts indicated, if any.

The COLLECTOR will immediately check each item against the accounts of the taxpayer and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part and make such abatements as may be warranted by the conditions of the taxpayer's accounts for the years involved. If any part of any such item is found to be an overpayment, the Collector will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against income, war profits, or excess profits taxes due, if any, making the appropriate entries in his accounts. The amounts credited will be entered by the Collector in column 6. The balance, if any, of the overpayment refundable will be entered in column 7 and an appropriate MEMORANDUM made upon the taxpayer's account showing the refund and the amount refunded. The Collector will thereupon complete and certify this schedule and return the same, with the necessary papers, to the Commissioner of Internal Revenue.

The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.

The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in columns 9 or 10, or both.

Date JUL 28 1933

Chas. D. Russell
Deputy Commissioner

Date JUL 28 1933

Guy T. Helvering
Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items on this schedule have been checked against the accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts indicated, and not amounts refundable have been determined as shown in column 7.

Date AUG 4 1933

Joseph Woel
Collector, District of MINNESOTA

Consent of Surety Company Required (a)	Name of Taxpayer (b)	Overassessment or Reduction of Tax Liability (Abatement) (c)	Tax Affected Year (d)	(Entries to be made by the Collector) Amount Abated (e)	Amount Credited to Other Taxes Due (f)	Net Amount Refundable (g)	(Entries to be made by the Disbursing Clerk) REFUNDING TAXES ILLEGALLY COLLECTED Interest on Refund and Credit (h)	Amount to be Paid 19___ and Prior Years (i)	Amount to be Paid 19___ (j)	Name and Description of Check, Voucher, Draft, or Certificate Issued: Number and Date (k)	Remarks (l)
X X	Totals of _____ Items on this Schedule,		X							X X	X X
		INTEREST ALLOWED			CREDITED						
2029738	MINNESOTA AND ONTARIO PAPER CO. C T JAFFRAY AND R H M ROBINSON RECEIVERS	396 06	25		396 06						6705 Receipt

Comptroller General AUG 12 1933

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5218

SUPPLEMENTAL
Schedule No. IT- 50519

Sheet 1 of _____ sheets

District of MINNESOTA

Disbursing Clerk Voucher No. _____

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue

The items on this schedule have been checked against the warrants of the respective taxpayers concerned. Abatements and credits in this account have been applied in the amounts indicated, and the amounts scheduled have been disbursed as shown in column 7.

INITIALS	DATE

Date AUG 4 1933

Joseph Woel
Collector

District of MINNESOTA

Amount to be Paid 19____ and Prior Years (5)	Amount to be Paid 19____ (6)	Paid or Disposed of by Check, Draft, or Certificate of Deposit as Follows (7)	REMARKS (8)
		X X	X X X X
			670 Angle Rest Qt. M. Wheat

To Comptroller General AUG 12 1933

List · 5218

SCHEDULE OF OVERASSESSMENTS

ABATEMENTS, CREDITS, AND REFUNDS

INCOME TAX UNIT

SUPPLEMENTAL Schedule No. IT- 50519

Sheet 1 of

District of MINNESOTA

Disbursing Clerk Voucher No.

AUTHORIZATION OF COMMISSIONER

This schedule must be adjusted and all required steps taken IMMEDIATELY.

The amounts listed in column 5 as overassessments (or reductions of tax liability) are hereby approved and allowed in the respective amounts indicated, if any.

The COLLECTOR will immediately check such items against the accounts of the taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part and make such abatements as may be warranted by the condition of the taxpayer's accounts for the years involved. If any part of any such item is found to be an overpayment, the Collector will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against income, war profits, or excess profits taxes due, if any, making the appropriate entries in his accounts. The amounts credited will be entered by the Collector in column 6. The balance, if any, of the overpayment refundable will be entered in column 7 and an appropriate MEMORANDUM made upon the taxpayer's account showing the refund and the amount refunded. The Collector will thereupon complete and certify this schedule and return the same, with the necessary copies, to the Commissioner of Internal Revenue.

The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.

The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.

Date JUL 28 1933

Chas. J. Russell
Deputy Commissioner

Date JUL 28 1933

Guy T. Helvering
Commissioner of Internal Revenue.

CERTIFICATE OF DEPUTY COMMISSIONER

To the Commissioner of Internal Revenue:

The tax liability of the respective taxpayers herein listed has been determined in accordance with applicable laws and the facts. The overassessments or reductions of tax liability indicated in column 5, or amounts refundable, listed in column 7, are accordingly recommended for allowance.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items on this schedule have been checked against the accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts indicated, and not amounts refundable have been disallowed as shown in column 7.

Date AUG 4 1933

Joseph Woel
Collector
District of MINNESOTA

Certificate of Overassessment Number (1)	Name of Taxpayer (2)	Overassessment or Reduction of Tax Liability (Amount) (3)	Taxable Year (4)	(Entries to be made by the Collector) Amount Abated (5)	Amount Credited to Other Taxes Due (6)	Net Amount Refundable (7)	(Entries to be made by the Deputy Commissioner) REFUNDING TAXES ILLEGALLY COLLECTED Interest Refund and Credit (8)	Amount to be Paid 19____ and Prior Years (9)	Amount to be Paid 19____ (10)	Paid by Disbursing Clerk, Treas. Dept., or Credited Refunded as Overpaid (11)	Remarks (12)
X X	Totals of _____ Items on this Schedule,		X							X X	X X
		INTEREST ALLOWED			CREDITED						
2029738	MINNESOTA AND ONTARIO PAPER CO C T JAFFRAY AND R H M ROBINSON RECEIVERS	396 06 25			396 06						6070 receipt

Comptroller General AUG 12 1933

237

E · 5213

SUPPLEMENTAL
Schedule No. IT- 50519

Sheet 1 of _____ sheets

_____ District of MINNESOTA

Disbursing Clerk Voucher No. _____

actively
payment,
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ed made
ollector

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items on this schedule have been checked against the accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts indicated, and net amounts refundable have been determined as shown in column 7.

INITIALS	DATE

Date AUG 4 1933

Helvering

Joseph Woel

Collector District of MINNESOTA

be made by the Deputy Commissioner) D TAXES ILLEGALLY COLLECTED				Paid by Davenport Check, Treas. Draft, or Certified Draft	REMARKS
AMOUNT TO BE PAID 19_____ AND PRIOR YEARS (5)		AMOUNT TO BE PAID 19_____ (6)		(9)	(10)
				X X	X X X X
					6 of 0 withheld per Capt. Mullett

277

Exhibit U.

Treasury Department
Washington.

Office of
Commissioner of Internal
Revenue

Aug. 31, 1933.

Address Reply to
Commissioner of Internal
Revenue and refer to
IT:C:CC—4
CCP

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

In Re: Refund Claims for years: 1922, 1923, 1924.
Amounts: $66,818.77, $110,241.81,
$86,355.86 (2) $36,904.69, $29,882.76
and $49,670.56.

Sirs:

In accordance with the provisions of Section 3226, Revised Statutes, as amended, and as further amended by Section 1103 of the Revenue Act of 1932, you are hereby notified that your claims for refund of taxes were disallowed to the extent indicated in certificates of overassessment numbered 2011190, 2014278, 2030102, on a schedule dated July 13, 1933.

By direction of the Commissioner:

Respectfully,

CHAS. T. RUSSELL,
Deputy Commissioner.
By T. F. Langley,
Head of Division.

278 Exhibit V.

Treasury Department
Washington.

Office of
Commissioner of
Internal Revenue

Aug. 31, 1933.

Address Reply to
Commissioner of Internal
Revenue and refer to
IT:C:CC-4
CCP

C. T. Jaffray and R. H. M. Robinson, Receivers,
Minnesota and Ontario Paper Company,
1100 Builders Exchange Building,
Minneapolis, Minnesota.

In Re: Refund Claims for years: 1925, 1928,
Amounts: $8,815.30, $6,401.49,
$3,400.75 and $7,758.58.

Sirs:

In accordance with the provisions of Section 3226, Revised Statutes, as amended, and as further amended by Section 1103 of the Revenue Act of 1932, you are hereby notified that your claims for refund of taxes were disallowed to the extent indicated in certificates of overassessment numbered 2029738, 2223612, on a schedule dated July 13, 1933.

By direction of the Commissioner:

Respectfully,

CHAS. T. RUSSELL,
Deputy Commissioner.
By T. F. Langley,
Head of Division.

Exhibit Q

Form 1040—Revised January, 1921
UNITED STATES INTERNAL REVENUE SERVICE

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS HAVING NO OFFICE OR PLACE OF BUSINESS IN THE UNITED STATES, AND CORPORATIONS (NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND NOT HAVING ANY OFFICE OR PLACE OF BUSINESS THEREIN)

For the Calendar Year 1921

Do not write in this space
PAYMENT
$
(Collector's Receipt)

CASH CHECK M. O.
Received by

(Name of withholding agent.)

(Address in full.)

INSTRUCTIONS

This return is required to be made by all individuals, corporations, and partnerships, of whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of nonresident alien individuals, foreign partnerships, and foreign corporations, subject to the tax imposed by section 1, title II, of the Revenue Act of 1921, whether any office or place of business is maintained in the United States or not.

This form requires that there shall be deducted and withheld a tax equal to 8 per centum of the amount paid as salaries, wages, rents, etc., to nonresident alien individuals and partnerships having no office or place of business in the United States and 12 per centum of the amount paid to foreign corporations. If any tax required to be deducted and withheld is paid by the recipient of the income, it shall not be withheld from the withholding agent. Income derived from dividends allowed as a credit for normal tax is not subject to withholding.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made during the calendar year 1921 by the above withholding agent and of the tax withheld in payment thereof, to nonresident alien individuals, foreign partnerships, and foreign corporations or their agents, the amount being fixed before and deducting the taxes and addresses of the recipients of the income, the kind and amount of income paid, and the amount of tax withheld.

DATE	AMOUNT PAID	TAX WITHHELD
25	$	$
25	$	$
Totals	$	$

(Signature)

(Position or title)

Sworn to and subscribed before me this _____ day of _____, 192

(Signature.) (Title.)

NAME OF RECIPIENT OF INCOME, OR AGENT, TO WHOM PAID	ADDRESS IN FULL	AMOUNT OF INCOME	AMOUNT OF TAX WITHHELD
		$	$

Totals

Exhibit W 278

EXHIBIT W.

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DELINQUENT

Form 1042
Treasury Department
Internal Revenue Service

Collector will stamp here the date of filing if the return is not executed by a collector.

Received

COLLECTOR INT. REV.
OCT 4 1932
PAID or MADE
By [illegible]

This return must be made by the Collector of Internal Revenue for the district in which the withholding agent is located, on or before March 15, 1922, and the tax must be paid on or before June 15, 1922.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

For Calendar Year 1932 1921

Minnesota and Ontario Power Company
(Name of withholding agent)

1100 Builders Exchange Bldg. Minneapolis, Minnesota
(Address)

Do not write in this space
PAYMENT
$ .....
(Cashier's Stamp)

CASH CHECK M. O.
Received
By .....

INSTRUCTIONS

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds), rents, salaries, wages, or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 26 (a) of the Revenue Act of 1932) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payers of such income are required to withhold and deduct a tax therefrom at the rate of 5 per cent when paid to nonresident alien individuals or foreign partnerships, and 15 per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,000, and, in addition, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1115 with his employer not later than February 1 of the succeeding year. By filing Form 1115 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable to compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1932. 1921.

Rate	Amount Paid	Tax Withheld
1½%	$	$
3%		
5%		
10 15%	164525.98	16452.60
Total	$	$

This return is prepared under Sec.3176 R.S. from the best information available

J. P. Fahnestock
(Signature)
Deputy Collector
(If signed by agent, state relation)

Guy J. Helgeson
(Commissioner)

Number of Claims for Credit, Form 1115, attached to this return none

Sworn to and subscribed before me this 4th day of Oct, 1932.

A. P. Gardner
(Notary Public)

Geo. Coll
(Title)

Name of Nonresident Individual or Foreign Partnership or Foreign Corporation to Which Paid	Address to Which Paid	Amount of Income Paid	Exemptions and Credits (Attach Form 1040)	Amount Taxable	Amount of Tax Withheld
Fort Francis Pulp & Paper Co.	Ltd. Fort Francis Ont.	$ 164525.98		$ 164525.98	$ 16452.60
			AUDIT NOTICE OF ADDITION		
			2.89 Act 19		
			A... AT		
				5452.60	
				411.25	
				10.556.14	
			Total	31.120.89	
			Tax at 5%		
			1% OA or BAR	19	
		164525.98		164525.98	16452.60

Return Prepared By the [illegible] Act of Tax Practitioners of Canada

EXHIBIT X.
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281 Mr. Garvey: And the previous statement by the Court, covers the matter of exceptions?

The Court: Yes, an exception is allowed the defendant.

Mr. Hammond: There are one or two cases, your Honor, which hold that the allowance of exceptions generally is not so good, and I wonder if we could have an exception to the rulings as the Court makes them?

The Court: Well, the Court reporter may note an exception after each and every adverse ruling.

Mr. Larson: There are certain objections which the plaintiffs would like to make to certain portions of the stipulated facts. The plaintiffs object to the reception in evidence of Paragraph 3 of Section 5 of the written stipulation, together with Exhibits A and B therein referred to, on the ground that the same is not within the pleadings or issues in this case, and on the further ground that it is irrelevant and immaterial. The same objection is interposed to the reception in evidence of Paragraph C of Section 7. The same objections are interposed also to Paragraph C of Section 8. The plaintiffs object also to the reception in evidence of Paragraph I of Section 9 on the ground that the same is not within the pleadings or issues in the case, and on the further ground that it is irrelevant and immaterial for the particular reason that the years in question in the proceeding, in said paragraph referred to, were not the years involved in the case at bar; that none of the issues in said proceeding or litigated in said proceeding, are presented or at issue in the case at bar, and that the decision in said proceeding was not and is not res adjudicata of any question or issue raised or presented by the pleadings or issues in the case at bar. The plaintiffs object also to the reception in evidence of Paragraphs A and B of Section 14; to the phrase "Pursuant to authorization given in the Court's order aforesaid" in Paragraph C of Section 14, and to Paragraph D of Section 14, together with Exhibits M and N referred to in said
282 Paragraphs A, B, and D, on the ground that the matters referred to are not within the pleadings or issues in this case, and on the further ground that they are irrelevant and immaterial. The plaintiffs object to the reception in evidence of the last sentence of Paragraph A of Section 18, on the ground that said paragraph is not within the pleadings and issues in this case, and on the further ground that it is irrelevant and immaterial. The plaintiffs object to the

reception in evidence of the first two sentences and the last sentence of the first paragraph of Section 18-B together with Exhibit X therein referred to on the ground that they are not within the pleadings or issues in this case, and on the further ground that they are irrelevant and immaterial, and on the further ground that it appears from the stipulated facts that the filing of the return, Exhibit X, by the Deputy Collector as in said paragraph B set out, was and is without authority of law; that it is clear from the admitted facts that the return was prepared and filed after the running of the statute of limitations against the assessment and collection of withholding taxes for the year 1921. May it appear in the record, if your Honor please, that these objections are taken before the reception in evidence of the stipulation?

The Court: Yes, it may so appear.

Mr. Larson: And the Court's ruling in respect to exceptions applies to all rulings on objections made by the plaintiffs or defendant?

The Court: Yes, it is so understood. I do not know just what counsel expect with respect to the ruling on these objections. Of course I am not in a position to intelligently rule at this tme. I assume that you intend to cover the matter in some appropriate brief that will be handed to the Court?

Mr. Larson: That is correct.

283 The Court: Well I will receive the stipulation subject however to such objections as have been noted, or will hereafter be noted, and an exception will be allowed to the plaintiffs.

Mr. Larson: May it please the Court: There are two cases set for trial and hearing this morning, law Number 3391, and the claim of the Collector of Internal Revenue, in Consolidated Proceedings Number 11,640. The Court will recall that the second case was set for trial immediately following Law Number 3391. Certain of the facts which we consider pertinent in Law Number 3391 have been stipulated as facts in Consolidated Proceedings 11,640, and a little later, if it please the Court, I think that counsel for the respective parties will read into the record an agreement covering the reception in evidence in this case of the facts stipulated in the other case.

The Court: Do I understand that there is some additional testimony in the matter of the trustees against the United States?

Mr. Faegre: Yes, and the additional testimony may under the stipulation be applicable in both cases. We are ready to put that in now, if the Court please.

The Court: Well, I understand, however, that the Government is not willing to have any consolidation of these cases—at least that was the understanding that I gathered from you gentlemen.

Mr. Faegre: That is right.

The Court: I am ready now to hear whatever testimony you have to offer in the matter of the trustees against the United States.

Mr. Faegre: Well, we have some testimony there, your Honor.

Thereupon, RALPH D. MAIN was called as a witness on behalf of the trustees, and having been first duly sworn, testified as follows:

Has resided in Minneapolis since 1910, and is employed by the Trustees of the Minnesota & Ontario Paper Company, and by the subsidiaries of the Minnesota & Ontario Paper Company. Prior to February 28th, 1931, the date of receivership of Minnesota & Ontario Paper Co., he was employed by the Fort Frances Pulp & Paper Company, Ltd., a Canadian corporation. He was first employed with
284 that company in 1923. Previous to that employment his business was that of an Accountant on income matters. In 1923 his employment with the Fort Frances Pulp & Paper Company was that of Comptroller, and his duties consisted of supervising all of the accounting, the accounting records and he handled financing matters for his superiors. His employment as Comptroller continued to February 28th, 1931, and from that time to now he has been Treasurer of the Fort Frances Company.

Q. Mr. Main, as comptroller of the Fort Frances Pulp & Paper Company, Ltd., where did you discharge your duties—where did you carry on your work?

Mr. Garvey: Objected to on the ground that it is inadmissible and not within the issues and immaterial under the allegations of the petition as amended; that the statute itself, refers in the same sentence to the maintaining of an office and a business within the United States. The mere allegation of plaintiff that they maintained some sort of an

office in the United States we contend would not be materia that there must be more than that; that the very idea exempting them from withholding tax, where they main tain an office and a business within the United States is b cause in that event an income tax return could be mad and the tax could be collected out of their property interest where they were doing business within the United State and the mere fact that they may have maintained some so of an office is not sufficient to supply a cause of action, or defense, based upon the fact that they were not liable f withholding taxes because they come within that provisi of the statute which exempts those corporations which main tain an office and a business within the United States.

The Court: He may answer.

Mr. Garvey: Exception please.

(Mr. Main continuing.) In the Builders Exchange Build ing in Minneapolis. The general ledger, cash book
285 voucher registers, journals, checks and so on were i Minneapolis, and there would be entered into thos books all sales, all receipts and all disbursements, which in formation would come from International Falls, with respec to the sales, and the information on the disbursements, tha is the invoices for purchases of merchandise and so on, woul come direct to the Minneapolis office from the seller.

He would say about two or three men were engaged s Minneapolis in the normal duties of the Fort Frances Pulp & Paper Company, Ltd., beginning in the year 1923 and extend ing down to the year 1931. The officers that had offices wit the Fort Frances Pulp & Paper Company, Ltd., and dis charged their duties at Minneapolis were Mr. E. W. Backus the President, Seymour W. Backus, the Vice President, an W. F. Brooks, Secretary-Treasurer. Rent was paid by th Fort Frances Pulp & Paper Company, Ltd., for office spac in the Builders Exchange Building, and from about 192 or 1927 the name was put on the door and remained ther continuously, the letters being about four inches deep.

Q. During the years you have mentioned did the For Frances Pulp & Paper Company, Ltd., have printed statio ery and letterheads? A. Yes, sir.

Mr. Garvey: We desire at this time to object to this te timony on the ground that it has to do with the merits o the determination of the Commissioner that resulted in th payment of the withholding tax in 1921 and that there an

no claims for refunds filed with the Commissioner alleged in the pleadings.

The Court: Objection overruled. Exception allowed defendant.

Witness was shown Plaintiff's Exhibits 1, 2, 3, and 4, and testified that that was the style of letterhead that was used by the Fort Frances Pulp & Paper Company, Ltd., on or about the dates the respective exhibits were written, and were used continuously by the Fort Frances Company up to the middle of 1931 when a slight change was made in the letterhead. They were all written from Minneapolis.

286 Plaintiff's Exhibits 1 to 4 inclusive offered in evidence. Said Exhibits 1, 2, 3, and 4 are letters dated October 12, 1923, November 10th 1923, December 3, 1923 and July 17th 1924, respectively; they are typewritten on stationery bearing at the top the following matter in printing:

"Fort Frances Pulp & Paper Co., Ltd.
Manufacturers and Merchants
High Grade News Print Paper
Builders Exchange Building
Minneapolis, Minnesota."

In its upper left hand corner the stationery bears a monogram with the letters "FFP&PCo" intertwined against a dark background.

The addressee on all four exhibits is "A. D. George, Fort Francis, Ont."

Exhibit 1 is signed "E W. Backus"; Exhibit 2 is signed "G. Sherman Collins, Acting Comptroller"; Exhibit 3 is signed the same as Exhibit 2; Exhibit 4 is signed "R. D. Main, Comptroller".

Mr. Garvey: The exhibits are objected to on the ground that it has to do with the correctness of the determination of the Commissioner that resulted in the withholding tax assessment in 1921, and we want the record to show that it is the intention of the Government not to waive the filing of a claim for refund as a prerequisite to the Court inquiring into the legality and the propriety of the assessment of withholding taxes for 1921.

Mr. Carnduff: My name is Carnduff. I wish to note an appearance in this case, for the Government. I am assigned to the trial of Case Number 11,640, in behalf of the United States, and I have just heard that the evidence herein

presented will be considered in the reorganization case 11,640. Am I correct?

The Court: I have not so ruled.

Mr. Carnduff: I simply wished to interpose my appearance, if my case was being considered.

The Court: I understood the Government did not consent to a consolidation, and consequently I am assuming that the testimony that I am now hearing applies only to the case of the trustees vs. the United States. If it is the agreement of counsel that the evidence may be considered in both cases, I have no objection. You gentlemen will have to make yourselves clear to me.

Mr. Faegre: I think the cases are set down to be tried consecutively, but I understand that the Government will agree with us, or are willing to stipulate that the evidence in either case, so far as pertinent, may be treated as received in the other case.

287 Mr. Carnduff: It is my recollection that there was such a stipulation heretofore entered in this case, that the evidence in one case, so far as pertinent, could be considered in the other. I think we can solve this by stating that there will be no objection to this evidence being considered in the other case, to avoid any needless repetition, and save an hour of the Court's time.

The Court: Well, I see that Mr. Larson has called my attention to an order that I apparently overlooked, and apparently there has been an order made that the evidence introduced in this proceeding shall be considered as offered and received upon the claim in the receivership matter, in so far as it may be applicable, or may bear upon the issues therein. I am not sure that I understand your position now with reference to this testimony.

Mr. Carnduff: At this stage of the proceeding, with the consent of the United States Attorney, I wish to enter an appearance in Case Number 3391 Law.

The Court: Very well.

Mr. Carnduff: Is that satisfactory?

Mr. Faegre: Yes.

Mr. Carnduff: And I wish to interpose an objection to this question, which would be, in my opinion, a pertinent objection in my case, although not in the other. I therefore object to the introduction of Plaintiff's Exhibits 1 to 4 inclusive,

in so far as Case Number 11,640 is concerned, for the reason that these exhibits are immaterial, incompetent, and do not tend to prove or disprove any of the issues in cause Number 11,640 and are not properly circumscribed by the issues therein, in that these exhibits tend to show an office of the Fort Frances Pulp & Paper Company, Ltd. in the United States during the year 1923, and the year 1924, and whether they had an office in the United States in those years or not is entirely incompetent and irrelevant in cause Number
288 11,640, because cause Number 11,640 is a claim in respect of withholding taxes due because of a payment in the year 1927 and 1927 alone.

The Court: Well, I understood the witness to testify that the letterhead as indicated by these exhibits are samples of the style of letterhead used during the years that the Fort Frances Pulp & Paper Company, Ltd., maintained its office in Minneapolis—is that right?

The Witness: Yes, including part of 1931.

The Court: I will receive them in evidence. Exception allowed.

The Witness: (Continuing.) Since 1931 substantially the same letterhead has been used but the trade-mark in the left hand corner of Exhibit 1 has been eliminated. There was an annual audit made by public accountants of the affairs of the Fort Frances Pulp & Paper Company, Ltd., during the years 1923 to 1933, inclusive, the major portion of the work of the auditors was carried on in Minneapolis, and some of it at International Falls. The general ledger, journals and cash books kept in Minneapolis were the only books of that nature kept by the company, no duplicate being kept elsewhere. The Fort Frances Pulp & Paper Company, Ltd., did not have an office in International Falls during those years; its office being in Minneapolis.

Witness stated that Plaintiff's Exhibits 5, 6, and 7, were received at the office of the Fort Frances Pulp & Paper Company, Ltd., in Minneapolis on or about their respective dates.

Exhibit 5 is a letter written on unprinted letter paper. It is dated as follows "International Falls, Office Of The Vice President, May 12, 1926". It is addressed as follows: Fort Frances Pulp & Paper Co. Minneapolis, Attention of R. D. Main". It is signed as follows: "Fort Frances Pulp & Paper Company George McLean".

On its upper right hand side bears an impression stamped in blue stating "Received May 13, 1926 at 9.15".

Exhibit 6 is a letter on the stationery of H. A. Tibbetts, Barrister And Solicitor, Fort Frances, Ontario"., signed by H. A. Tibbetts as Town Solicitor of the town of Fort Frances, Ont., It is dated May 11th 1926 and is addressed to George McLean, Esq., Vice President The Ontario & Minn Power Co., International Falls, Minn".

Exhibit 7 is a letter on the stationery of C. R. Fitch Barrister And Solicitor of Fort Frances, Ont., it is signed by Mr. Fitch; bears date May 15th 1926 and is addressed to Fort Frances Pulp & Paper Co., Ltd. 1100 Builders Exchange Minneapolis, Minn". In its upper right hand corner Exhibit 7 bears a stamped imprint in blue showing received on May 17th 1926 at 10:15.

Mr. Faegre: Exhibits 5, 6, and 7 are offered, not as evidence of their contents, but as letters which were addressed to the Fort Frances Pulp & Paper Company, Ltd., at Minneapolis during the year 1926 to show that it was customarily receiving mail there.

Mr. Garvey: The exhibits are objected to as not within the issues, and irrelevant to any issue properly before the Court.

289 The Court: They may be received in evidence. Exception allowed.

Witness shown Plaintiffs' Exhibits 8, 8-A, and 8-B, and testified he first saw those exhibits on or about July 7, 1926, the date they bear, at the Minneapolis office, same being a communication addressed to the Fort Frances Pulp & Paper Company, Ltd., at Minneapolis.

Mr. Faegre: We offer in evidence Plaintiffs' Exhibits 8, 8-A, and 8-B, as well as the contents of these letters, since they show that the taxing officials of the town of Fort Frances were addressing notices of local taxes to Fort Frances Pulp & Paper Company Ltd. at 1100 Builders Exchange, Minneapolis, Minnesota, in the year 1926.

Exhibit 8 is a letter on printed stationery of the Town of Fort Frances, Ont., dated July 7th 1926, signed J. W. Walker, Clerk, and addressed to The Ontario & Minnesota Power Company, Ltd., The Fort Frances Pulp & Paper Co., Ltd., The International Bridge & Terminal Co. Ltd., 1100 Builders' Exchange, Minneapolis Minn., Exhibit 8 refers to a tax notice therewith enclosed and served upon the addressees. Exhibit 8 bears a blue stamped imprint at its upper right hand corner showing received on July 9th 1926 at 10:15.

Exhibits 8-A is a printed form entitled "Tax Notice—Town of Fort Frances 1926". It notifies the addressees in Exhibit 8 of the assessment of taxes against them and the demand for payment thereof in the total amount of $53,284.-31.

Exhibit 8-B is a Tax Notice form similar to Exhibit 8-A and is a notification to the three addressees in Exhibit 8. It is designated in typewriting "Alternative statement" and demands a payment of $36,087.76.

Mr. Garvey: Objected to on the ground that the exhibits are not relevant to any issue properly before this Court.

The Court: I do not assume that either counsel in these two cases object to the foundation that may have been laid for the exhibits?

Mr. Carnduff: No.

The Court: The exhibits will be received. Exception allowed.

The Witness: (Continuing.) Witness is shown Plaintiffs Exhibit 9 and testified that it is a letter that was received from the town of Fort Frances on or about August 2, 1926, relating to the taxes that were referred to in Plaintiffs' Exhibits 8, 8-A, and 8-B; which letter was received at the Minneapolis office of the Fort Frances Pulp & Paper Company, Ltd. There is a circular blue stamp in the upper right hand portion indicating the receipt of it by the company. The exhibit is addressed to the Fort Frances Pulp & Paper Company, Ltd. and refers to a check for $36,959.23 and he would say that a check was drawn at or about that time for payment of taxes to the town or Fort Frances; check being drawn at Minneapolis.

Exhibit 9 is a letter on printed stationery of the Town of Fort Frances, Ont., dated August 2, 1926, signed H. E. Marr, Treasurer, and addressed to Fort Frances Pulp & Paper Co., 1100 Builders' Exchange, Minneapolis, Minn. The stamp indicates the time of receipt as August 4, 1926 at 8:45.

Witness is shown Plaintiffs' Exhibit 10, and states it is a pencilled memorandum in his handwriting of the com-
290 putation of this tax referred to in Plaintiffs' Exhibit 9 for which the check was issued, and also relates to the same subject matter described in Plaintiffs' Exhibits 8, 8-A, and 8-B. It was the practice of the Fort Frances Pulp & Paper Company Ltd. during 1923 to 1933 to draw its checks at Minneapolis.

Exhibit 10 is on a printed form entitled "Office of Comptroller, Special Memo". It bears pencil notations and figures and a stamped imprint stating "Paid July 29, 1926".

Up to 1933 the company maintained a bank account in the Dominion Bank at Fort Frances, and they also had a bank account with the Continental Illinois Bank & Trust Company at Chicago up to 1931.

Plaintiffs' Exhibits 8, 8-A, 8-B, and 9 and 10 offered in evidence.

Mr. Garvey: The defendant objects to the reception in evidence of these exhibits on the ground that they are not relevant to any issue properly before this Court.

The Court: Exhibits received. Exception allowed.

The Witness: (Continuing.) Witness is shown Plaintiffs' Exhibits 11, 11-A, and 11-B and stated that Exhibit 11 was a letter received at Minneapolis by the Fort Frances Pulp & Paper Company, Ltd., on or about the date it bears, and in the top right hand corner is the receiving stamp of the Minneapolis office, dated August 23, 1926.

Exhibit 11 is a letter bearing the printed heading "Province of Ontario, Office of Crown Timber Agency". It is dated at Fort Frances, Ont, August 20th 1926 is signed J. A. Alexander, Crown Timber Agent, and is addressed to "The Fort Frances Pulp & Paper Co., International Falls, Minn." At its upper right hand corner it bears a blue stamped imprint showing receipt August 23, 1926 at 8:45.

Exhibit 11-A was enclosed with Exhibit 11, and is a notice of sale of timber bearing imprint the headnote "Ontario, Department of Lands and Forests, Forestry Branch".

Exhibit 11-B is the second and concluding page of the notice beginning on Exhibit 11-A.

Mr. Faegre: Plaintiffs' Exhibit 11 we offer in evidence as showing that the Crown Timber Agency of the Province of Ontario was in 1926 conducting business with the Fort Frances Pulp & Paper Company, Ltd., by addressing letters to the latter at Minneapolis.

Mr. Garvey: Objected to as irrelevant to any issue properly before this Court.

The Court: It may be received. Exception allowed.

The Witness: (Continuing.) Plaintiffs' Exhibit 12 is a copy of the annual tax return of the Fort Frances Pulp &

Paper Company, Ltd., filed with the Dominion of Canada for the year 1926. It was prepared under his direc-
291 tion on April 15, 1927. In the preparation of Plaintiffs' Exhibit 12 he had at the Minneapolis office of the Fort Frances Pulp & Paper Company, Ltd. all the data required for its preparation, and all the general records the general ledger and journals and the supporting vouchers. None of these records were at any other point other than its Minneapolis office.

Exhibit 12 is on a printed form entitled "Dominion of Canada, Income Tax, 1926". and the "Head Office Address" of the Fort Frances Pulp & Paper Company Limited is thereon given as "1100 Builders Exchange Building, Minneapolis, Minnesota" and the "Address of Chief Office in Canada" as "Fort Frances, Ontario".

Mr. Faegre: We offer Plaintiff's Exhibit 12 in evidence.

Mr. Garvey: Objected to as not relevant to any issue properly before this Court.

The Court: It may be received. Exception allowed.

The Witness: (Continuing.) Plaintiff's Exhibit 12 shows the return of interest paid or accrued; interest received or accrued from the Minnesota & Ontario Paper Company during the year 1926 by the Fort Frances Pulp & Paper Company, Ltd., which you will find on Schedule 2-E thereof under the heading "Other interest". The entry is "Other interest; Minnesota & Ontario Paper Company $310,593.23".

From year to year the Canadian or the Ontario Provincial Income Tax Officers checked the income tax return of the Fort Frances Pulp & Paper Company, Ltd. which was done at Minneapolis. They could not have found any records of the Fort Frances Pulp & Paper Company, Ltd. located elsewhere. He would say that the audit or checking by the Canadian tax officials occurred in Minneapolis during all the years 1923 to 1933 inclusive.

Witness identifies Plaintiffs' Exhibit 13 as a letter from the town of Fort Frances, signed by H. E. Marr, Treasurer, to Fort Frances Pulp & Paper Company, Ltd., 1100 Builders Exchange Building, Minneapolis, Minnesota, and relates to taxes due to the town of Fort Frances, received on or about July 8, 1927, at Minneapolis. Witness explains Plain-
292 tiffs' Exhibit 13-A as a copy of a letter dated July 19, 1927, written by himself and addressed to A. D. George, Fort Frances, Ontario, written at Minneapolis, to which was attached a copy of Plaintiffs' Exhibit 13.

Mr. Faegre: I offer in evidence Plaintiffs' Exhibits 13 and 13-A.

Mr. Garvey: Objected to on the same ground as stated to the previous exhibits.

The Court: The exhibits may be received. Exception allowed.

The Witness: (Continuing.) The witness identified plaintiffs' Exhibit 14 as a letter from the Inspector of Income Tax for the Dominion of Canada, dated April 16, 1927, from Fort William, addressed to the Fort Frances Pulp & Paper Company, Ltd., at Minneapolis, U. S. A., for his attention, received at Minneapolis, and bearing a receiving stamp. It shows an indebtedness in income taxes of $17,840.55.

Mr. Faegre: Plaintiffs' Exhibit 14 offered in evidence.

Mr. Garvey: Objected to on the same ground as stated to the previous exhibits.

The Court: It may be received. Exception allowed.

The Witness: (Continuing). The witness stated that during the year 1927 he had discussions with representatives of the Revenue Department of the United States Government regarding an examination of the books and records of the Fort Frances Pulp & Paper Company, Ltd. at its office 1100 Builders Exchange in Minneapolis. He thought the man's name was A. W. Hayes, and he was a representative of the Internal Revenue Department of the United States. The records of the Fort Frances Pulp & Paper Company, Ltd. were made available to the representatives of the Revenue Department in the year 1927 for examination at 1100 Builders Exchange Building. Witness identifies Plaintiffs' Exhibit 15 as a copy of a letter dated August 23, 1927, written by himself, as Comptroller of Fort Frances Pulp & Paper Company, Ltd.,
293 to Mr. G. W. Kurtz, Internal Revenue Agent in Charge at St. Paul Minnesota. It states in response to request by the addressee that Fort Frances Pulp & Paper Company would be pleased to have a representative of the addressee's office, call at any time for inspection of its books of Fort Frances Pulp & Paper Co.

Mr. Faegre: Plaintiffs' Exhibit 15 offered in evidence.

Mr. Garvey: The same objection as made to the previous exhibits.

The Court: The exhibit may be received. Exception.

The Witness: (Continuing.) The witness' attention was called to the language in Plaintiffs' Exhibit 15 relating to making available the books of the Fort Frances Pulp & Paper Company, Ltd., to representatives of the Revenue Agent's office, and then the witness stated that representatives of the Internal Revenue Department called at 1100 Builders Exchange at the office of the Fort Frances Pulp & Paper Company, Ltd. and inspected the records and books of that company; all the books and records were made available to them for the examination, which took about two or three days.

The witness identifies Plaintiffs' Exhibits 12-A, 12-B, 12-C, and 12-D as original receipts received from the Dominion of Canada for the payment by Fort Frances Pulp & Paper Company, Ltd. of 1926 income tax. Exhibit 12-A received at Minneapolis May 9, 1927; 12-B, on July 9, 1927; and 12-C, about September 2nd, or 3rd, 1927, and 12-D, about November 3rd or 4th. All four exhibits are addressed to Fort Francis Pulp & Paper Company at 1100 Builders Exchange, Minneapolis, Minn.

Plaintiffs offer in evidence Exhibits 12-A, 12-B, 12-C, and 12-D, which are objected to by defendant on the same grounds as previously stated, received in evidence, and exception allowed.

Witness is shown Plaintiffs' Exhibit 16 consisting of nine pages and identifies the exhibit as a file of letters between Fort Frances Pulp & Paper Company, Ltd. and Dominion Tax Officials relating to the 1923 assessment against the Fort Frances Pulp & Paper Company, Ltd. by the Dominion of Canada.

Five of the nine sheets are copies of letters to Tax Officials of the Dominion of Canada and are signed by Fort Frances Pulp & Paper Company by various of its officers; three of the nine sheets are communications from Canadian Income Tax officials addressed to Fort Frances Pulp & Paper Company at Builders Exchange Building, Minneapolis, Minnesota; one of the nine sheets is a receipt signed by the Inspector of the Income Tax of the Dominion of Canada acknowledging receipt of $13,450.44 from Fort Frances Pulp & Paper Company, addressed to the Builders Exchange Building, Minneapolis, Minn.

294 Plaintiffs offer in evidence Plaintiffs' Exhibit 16, which is objected to on the same grounds stated to the other exhibits. Exhibit received and exception allowed.

From six to eight people were employed for whole or part time during 1923 to 1933 in the business of the Fort Frances Pulp & Paper Company, Ltd. at its office in Minneapolis, and the character of the business was substantially the same during those years; that is, the keeping of accounting records, drawing of checks, receipt of mail and the examination and audit of records here by the Canadian authorities has been substantially the same during all those years.

The Minneapolis City Directories for the years 1926, 1927, and 1928 list the Fort Frances Pulp & Paper Company Ltd., as having an office at 1100 Builders Exchange in Minneapolis, and for 1927 lists the officers as E. W. Backus, President, and W. F. Brooks, Secretary-Treasurer. Mr. Brooks and Mr. Backus were residents of Minneapolis during those years and continuously from 1923 to their deaths in 1928 and 1934 respectively.

Cross-Examination.

Witness testified he was Comptroller for the Fort Frances Pulp & Paper Company, Ltd. in 1927, and his attention was called to his identification of an exhibit wherein he wrote to the Revenue Officers of the United States and that a few days thereafter they came to his office in Minneapolis. At that time he was thoroughly familiar with the affairs of the Fort Frances Pulp & Paper Company, Ltd. and was the responsible officer with reference to its accounting and financing. He remembers that during the year 1927 an adjustment of credits was made between the Minnesota & Ontario Paper Company and the Fort Frances Pulp & Paper Company, Ltd., and a large sum of interest was paid by the American company to the Canadian company. He cannot remember whether that payment was made before or after the revenue officers of the United States came to his office in 1927. When asked as to his best recollection, he stated that he could not answer the
295 question. He was present, but not all the time, when the revenue officers of the United States came to his office in 1927 and he discussed the affairs of the Fort Frances Pulp & Paper Company, Ltd. with them, but does not remember whether or not he called their attention to the $1,498,000 odd interest paid at that time. He stated he was not the tax counsel for the company during all those years, and although he partially advised the Fort Frances Pulp & Paper Company, Ltd. with reference to their taxes in the year 1927, they had a tax counsel. He had the Canadian Income Tax return under his direction. During the years 1921 to 1927 inclusive, the Fort Frances Pulp & Paper Company, Ltd. filed no tax

returns of any nature whatsoever to the United States, and it is so stipulated to that effect. He considered the filing of such returns at various times. He had nothing to do with the tax returns for the Minnesota & Ontario Paper Company. He had something to do with returns made to the United States on behalf of the other companies affiliated or associated with it, and when he believed such returns should be made, he caused them to be prepared. During the course of that work it became necessary to consult the statutes and regulations concerning United States tax returns and he was more or less reasonably familiar with them in the year 1927. His attention was called to Regulation 69 of the Commissioner pertaining to the regulatory act of 1926 and with special reference to Article 601, that if you claim exemption as a foreign corporation because you have an office in the United States you should file Form Number 1086 advising the Government of that fact, and witness stated he probably read it, but is not familiar with Form 1086. As to why the Fort Frances Pulp & Paper Company, Ltd. did not file Form 1086, the witness stated that he does not know what form 1086 is and he could not answer that question. Argument between counsel as to whether Form 1086 should be filed with the debtor or the United States, and the witness was then asked whether he filed Form 1086 with the Minnesota & Ontario Paper Company in behalf of the Fort Frances Pulp & Paper Company, Ltd. and he stated he had no recollection of it. When asked why he did not prepare and file said form claiming that the Fort Frances Pulp & Paper Company Ltd. had an office in the United
226 States, he stated, he can only answer that by saying that he had to leave the details of the returns to those who came under his supervision, and that he personally had no time to do it himself.

Mr. Backus and Mr. Brooks in 1927 were officers of all the affiliated companies of the Minnesota & Ontario Paper Company. As to whether they received a separate salary from all the companies, the witness stated that they did not receive a separate check. The office at 1100 Builders Exchange in the City of Minneapolis covered the entire 11th floor and part of the 12th floor of that building. It was the main and central office of the Minnesota & Ontraio Paper Company and the name on the door of the Fort Frances Pulp & Paper Company, Ltd., was among the names of a large number of corporations, he thought about eight. There was no separate room in that suite devoted solely to the office of the Fort Frances Pulp & Paper Company and the records were kept in the main accounting office. The books and papers of the Fort Frances Company were not kept indiscriminately

with the books & records of the various companies. The books of the subsidiaries were kept in a certain definite location in the vault; each one was alloted a certain place in the vault. The Fort Frances Pulp & Paper Company, Ltd. was alloted two desks in a large room, with other desks. He would say there were about 25 desks in that room. He sat in what was known as the front office and not at one of the two desks. He had a private office. He devoted his time not only to the Fort Frances Pulp & Paper Company, Ltd., but to the other subsidiary companies of the Minnesota & Ontario Paper Company. The six or eight people referred to did not work full time for the Fort Frances Co. The two or three persons he testified to as working for the Fort Frances Pulp & Paper Company, Ltd. occupied the two desks in the large office, and he would say, devoted their time solely to the Fort Frances Pulp & Paper Company, Ltd. Their salaries were paid by the parent corporation, the Minnesota & Ontario Paper Company, and charged 100% to the Fort Frances Pulp & Paper Company, Ltd. His salary was paid the same way and he was not paid a separate compensation every month solely and exclusively from the Fort Frances Pulp & Paper Company, Ltd.

297 The Fort Frances Pulp & Paper Company, Ltd., had no bank account in Minneapolis from 1923 to 1934. In 1921 and 1922 he did not know as he was not Comptroller then, as he was working on income tax matters with Peet, Marwick and Mitchell, and anything he testified to concerning 1921 and 1922 to a very great extent he knows by hearsay, by looking at the books, and by somebody telling him. With respect to the bank account kept by the Fort Frances Pulp and Paper Company, Ltd. kept in the Dominion of Canada, and in the Continental and Commercial Bank in Chicago, he would state that the average account between 1923 and 1927 at Chicago would be $5,000 to $10,000. The purpose of the Chicago account was to pay for any purchases which might be due in United States funds. The main bank account was kept in Canada in the Dominion bank. He did not think that any tax returns during the years 1923 to 1927 inclusive were ever made to the State of Minnesota or to the County of Hennepin or the City of Minneapolis by the Fort Frances Pulp & Paper Company, Ltd. He did not know of any property of the Fort Frances Pulp & Paper Company, Ltd. in Minneapolis outside of its ledgers and desks. Whether the two desks were owned by the Minnesota & Ontario Paper Company, he couldn't say. Outside of the books and records, he could not remember of any other property owned by the Fort Frances Pulp & Paper Company, Ltd. in the State of Minne-

sota. Their plant was in Canada, and their products were made in Canada, and outside of himself, Mr. Backus, Mr. Brooks and the two employees at the desks, everybody else employed by the Fort Frances Pulp & Paper Company, Ltd. was employed in Canada. It had no salesmen in the United States, and they did not sell any goods in the United States. All the paper they sold was made in Canada. The two or three employees employed at the two desks referred to in Minneapolis, were men bookkeepers. The check paid to the Canadian Government for income taxes due to Canada in the year 1926, as he testified to, could only have been drawn on the Dominion Bank, as there would not have been enough money anywhere else to pay it. Witness testified he now resides in Minneapolis and is an American citizen and was in 1927.

296 Redirect Examination.

The Fort Frances Pulp & Paper Company, Ltd., sold its manufactured products at Fort Frances in Canada, and its products were purchased by the Minnesota & Ontario Paper Company, with the exception of a few tons that might have been sold in Canada. In operating a factory of this character the operator of the mill usually planned his machine operations for a period of four weeks ahead, and this planning or determination was made in Minneapolis. Nearly always Mr. E. W. Backus or Mr. S. W. Backus gave the final instructions for the operations of the machines, that is, as to how many days they were to run and the tonnage to be produced. Corporate meetings of the Fort Frances Pulp & Paper Company, Ltd. were held in Minneapolis, and during the years 1926, 1927, and 1928, the Board of Directors on an average met about twice a year. He was not sure whether he was made a director, in 1927 or 1928. He would say that the adjustment entries of accounts between the Minnesota & Ontario Paper Company and the Fort Frances Pulp & Paper Company, Ltd. made during the year 1927 was reflected upon the books of the Fort Frances Pulp & Paper Company, Ltd. at the time the representatives of the Bureau of Internal Revenue were in the office of this company examining its records, he having refreshed his recollection from examination of the journal entry which is dated May 30, 1931.

Recross Examination.

With respect to the common room in the Builders Exchange Building, the Fort Frances Pulp & Paper Company, Ltd. paid to the Minnesota & Ontario Paper Company rent for

that space between $80.00 and $90.00 a month. It paid no rent direct to the owner or landlord of the building. An entry was made on its books to the parent company.

To his knowledge the Fort Frances Pulp & Paper Company, Ltd. never secured permission to do business in
299 the State of Minnesota, and never filed a petition seeking a license to do business in Minnesota with the Secretary of State of the State of Minnesota during the years 1923 to 1927.

Mr. Garvey: At this time, having just completed the cross-examination of the witness, R. D. Main, the defendant, in the present refund tax case, moves to strike out all of the testimony of that witness on the ground, first, that it is not pertinent to any issue properly before this Court, and second, because the statement of the witness himself shows that his testimony all relates to matters after the year 1922 and that anything in his testimony with reference to the year 1921, which is the only withholding tax involved in this law suit, would be hearsay.

The Court: I will deny the motion. Exception allowed.

Mr. Larson: The record may show that the parties in both Law Number 3391, and in the claim of the United States Collector of Internal Revenue in Consolidated Proceedings Number 11,640, agree that all testimony or evidence offered in either case, whether or not stipulated, may be considered as in the other case, subject, however, to the reserved rights of the parties as respects stipulated facts, to interpose objections on the grounds specified in the written stipulation as filed, and subject also to the reserved rights of the parties as respects other testimony or evidence, to interpose objections on any grounds whatever, and that all objections interposed to the receipt of evidence in either case may and shall be understood and considered as interposed to the receipt of the same evidence in the other case.

The Court: I understand that stipulation is acquiesced in by counsel?

Mr. Carnduff: In so far as the reorganization case 11,640, the United States agrees to this stipulation, and so stipulates.

300 Mr. Garvey: In so far as the refund tax case is concerned, any evidence or testimony in the withholding tax case will be objected to in the other case, not because they are not facts, but because of the jurisdictional questions

and as to the cause of action, and the other objections offered to the evidence offered in the refunding tax case.

The Court: Well, I have no objection to your putting in a stipulation to the effect that, subject to the objections that you have made in the main case, that the Court may consider testimony offered in either case, as offered in both cases.

Mr. Garvey: Subject to the objections stated, your Honor.

Mr. Larson: In case Number 11,640, the agreement which I will now read into the record, upon one point, may seem a little premature. However, it is necessary to read it into the case at this time as well as in the other case. The Court will observe that paragraph B of Section 15 of the written stipulation of facts in case Law Number 3391, the parties have agreed in sub-paragraphs 1, 2, 3, and 4, that the following amounts of interest allowed by the Commissioner on overpayments for the years 1922 to 1925 inclusive were applied by the Commissioner against withholding taxes, penalties and interest assessed by the Commissioner against the Paper Company for the year 1921; $24,034.73 of interest on the overpayment for 1922; $1,235.69 of interest on the overpayment for 1923; $3,038.92 of interest on the overpayment for 1924, and $2,501.09 of interest on the overpayment for 1925; a total of the four amounts of $30,810.46. The record may show that the parties do now stipulate and agree further that the four items of interest referred to are the same items of interest as those set out in corresponding amounts in paragraph O of Section 4 of the written stipulation of facts that will be filed with respect to the claim of the United States Collector of Internal Revenue in Consolidated Proceedings Number 11,640 and that the withholding tax assessment of $31,121.89 re-
301 ferred to in said paragraph O of that stipulation constitutes the withholding taxes against which said four items of interest on the overpayments for 1922 to 1925, inclusive, were applied as credits. Is that all right, Mr. Garvey?

Mr. Garvey: That is all right.

The Court: Will you furnish me with a memorandum of that, so I will be able to get it fully before me?

Mr. Larson: Yes.

Mr. Carrduff: I believe it is fully covered in the stipulation in my case. It is written out, and the only thing is that he wants to incorporate it in this case.

The Court: I see.

Mr. Larson: The plaintiffs have no further evidence at this time to submit in this Case Number 3391, the case now being heard, except as the testimony that is stipulated and will be represented by written filed stipulation in Consolidated Proceeding Number 11,640 applies to the evidence in the present case. Under the circumstances, it appears to us that we should not formally rest in case Number 3391 until the stipulation has been filed in the other proceeding. If that is agreeable to the Court and counsel, we are prepared to proceed with Case Number 11,640.

Mr. Garvey: It would seem to us, your Honor, that if the plaintiffs, when they have completed their case, do not rest, it may lead to confusion, in that there was no intention to consolidate these cases. It would seem to us that if the plaintiffs desire to offer, as evidence in this case now, the stipulation taken in the other case, that that would be the proper way to do it, rather than to attempt to hold this case in abeyance while they are doing something in the other case.

The Court: Well, I don't know that we need to be overly technical about it. The plaintiffs, as I understand it, in so far as Law Case Number 3391 is concerned, have concluded their testimony.

Mr. Larson: That is correct, your Honor.

302 The Court: And rest, in so far as that particular case is concerned, subject to the right to proceed with further evidence, as it may be necessary, in the action brought by the United States against the trustees.

Mr. Larson: That is correct.

Mr. Garvey: Well, regarding the matter of making a formal application for judgment in this case, this would necessitate postponing the doing of that until after they determine whether they intended to offer further evidence.

The Court: Well, your rights, in so far as may be necessary to protect them, will be preserved I presume with the same effect if you postponed the motion until the testimony is closed in both cases.

Mr. Garvey: The plaintiffs having rested in this case, the defendant now renews its motion to dismiss, the motion for dismissal heretofore having been filed.

The Court: The motion will be denied.

Mr. Garvey: We request that the record grant us an exception to the ruling of the Court.

The Court: Very well.

Mr. Garvey: The defendant, now resting, makes a motion for judgment and requests that the Court permit it to file its formal written motion for judgment.

The Court: The motion may be filed, and the Court will reserve its ruling, and it may be understood that in the event the motion is not granted, the defendant is reserved an exception.

The motion for judgment so filed, omitting caption, was in words and figures as follows:

303 Defendant's Motion For Judgment.

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of the Minnesota & Ontario Paper Company, a Corporation, Plaintiffs,
No. 3,391. vs. At Law.
United States of America, Defendant.

Now comes the United States of America, defendant in the above entitled action, by George F. Sullivan, United States Attorney for the District of Minnesota, and John E. Garvey, Special Assistant to the Attorney General, and moves the Court for judgment in its favor on the ground and for the reason that there is no evidence and certainly no substantial evidence upon which the Court can come to any other conclusion, and moves the Court further for judgment in favor of the plaintiff and against the defendant on each of the following grounds:

(1) That at the time of the commencement of this action, suit for the recovery of claimed overpayments of the Minnesota & Ontario Paper Company's consolidated income taxes for the years 1922 to 1925, both inclusive, was barred by the statute of limitations properly applicable thereto.

(2) That at the time of the commencement of this action, suit for the recovery of claimed overpayments of Minnesota & Ontario Paper Company's consolidated income taxes for the years 1922 to 1925, both inclusive, could not have been maintained against the Collector if he were in office, and accordingly this court does not have jurisdicton of this suit against the United States as defendant, in that the amount claimed for each of said years is in excess of $10,000.

304 (3) That at the time of the commencement of this action, the Collector, if he were in office, would not have

been liable to suit for interest on claimed overpayments of income taxes. Accordingly, to the extent recovery is sought in this action for interest on claimed overpayment of taxes for the years 1922 to 1925, both inclusive, (being the interest credited by the Commissioner of Internal Revenue on withholding tax assessment for the year 1921) this court is without jurisdiction of such purported cause of action against the United States in that the amount sought to be recovered as interest is in excess of $10,000.

(4) That this court does not have jurisdiction of the purported cause of action to recover claimed interest on claimed overpayments of income taxes for the years 1922 to 1925, both inclusive, for the reason that such interest was allowed by the Commissioner of Internal Revenue as a credit on and payment of a withholding tax assessment made against the Minnesota & Ontario Paper Company for the year 1921; that claim for refund of the amount so collected by credit on and under the said withholding tax assessment for the year 1921 has never been filed with the Commissioner of Internal Revenue.

(5) That the withholding tax assessment made by the Commissioner of Internal Revenue against the Minnesota & Ontario Paper Company on account of interest owing and paid by it on open account, for the year 1921, to the Fort Francis Pulp and Paper Company, a Canadian corporation, was made within the statutory period of limitations properly applicable thereto; that the correctness of the Commissioner's determination of tax liability that resulted in said assessment cannot be inquired into by this court, under the allegations of the pleadings in the case and the proofs presented.

(6) That this court does not have jurisdiction of the purported cause of action against the United States to recover claimed overpayments of income taxes for the year 1922 for the reason that, prior to the commencement of this action, an action by the Minnesota & Ontario Paper Company, against the Collector who collected the said tax, was commenced in this court to recover the same claimed overpayments as those alleged in this action, and such suit was based on the same claims for refund, and such former action was, by the plaintiff, dismissed with prejudice, and the present purported cause of action against the United States is to recover a sum in excess of $10,000.

305

(7) That this court does not have jurisdiction of the purported causes of action to recover claimed overpayments of income taxes for the years 1924 and 1925 for the reason that,

prior to the commencement of this action, on appeal thereto by the Minnesota & Ontario Paper Company, the United States Board of Tax Appeals regularly and by and through its orders which have become final, did on the 22 day of June, 1933, determine the tax liability of the said taxpayer for the said years 1924 and 1925, and did determine overpayments for each of said years, and the overpayments as so determined were credited by the Commissioner of Internal Revenue to tax assessments for other years against the same taxpayer, the said credits being made in accordance with the statutes in such cases made and provided; that, accordingly, the matters on which adjudication is sought in this action for the years in question have, before the commencement of this action, been finally adjudicated by the said Board of Tax Appeals.

(8) That prior to the commencement of this action, the claimed overpayments of income taxes for the years 1922 to 1925, both inclusive, were, by the Commissioner of Internal Revenue, pursuant to the mandatory provisions of applicable statutes, credited on deficiency tax assessments outstanding against the same taxpayer for other years, and, accordingly, the said claimed overpayment of income taxes for the said years 1922 to 1925, both inclusive, have been fully paid and satisfied by the application of the amount thereof as payments on said outstanding tax assessments for other years.

306 (9) That this Court does not have jurisdiction of purported causes of action for the recovery of claimed overpayments by credit of the income tax assessments for the years 1926, 1927, and 1928 for the following reasons: (1) that such collections by credit were made by the Commissioner and not by a collector; (2) that claims for refund of the amounts so collected by credit are not alleged or proven to have been filed with the Commissioner.

(10) That plaintiffs have wholly failed to prove that the Minnesota & Ontario Paper Company sustained a consolidated net loss in the year 1928; that the plaintiffs have failed to prove that the 1928 deficiency assessment for the sum of $7,758.58 tax, and $518.34 interest collected from the Minnesota & Ontario Paper Company on the 23rd day of April, 1930 was in excess of the income tax then and there owing by the said taxpayer for the said year; and plaintiffs have further wholly failed to prove that the income tax liability of the Minnesota & Ontario Paper Company for the year 1928 was overpaid at any time, in any amount or in any manner.

(11) That the plaintiffs have wholly failed to prove that the paper company sustained a consolidated net loss for the year 1926; that the plaintiffs have wholly failed to prove that the item of $788,879.21 and the item of $1,475.99 are allowable as deductions from the consolidated income of the paper company and its affiliates for the year 1926; that the plaintiffs have wholly failed to prove that the income tax liability of the paper company and its affiliates for the year 1926, as finally determined by the Commissioner was erroneous or illegal; that the plaintiffs have wholly failed to prove that the income tax assessed and collected by credit for the said year 1926 was illegally or erroneously assessed or collected; that the plaintiffs have failed to prove that the paper company overpaid its income tax liability for the year 1926 in any amount.

(12) That the plaintiffs have wholly failed to prove that the paper company sustained a consolidated net loss
307 for the year 1927; that the plaintiffs have further failed to prove that the income tax liability of the paper company and its affiliates for the year 1927, as finally determined by the Commissioner was erroneous or illegal; that the plaintiffs have further failed to prove that the income tax assessed and collected by credit for the said year 1927 was illegally or erroneously assessed or collected; that the plaintiffs have further failed to prove that the paper company overpaid its income tax liability for the year 1927 in any amount.

(13) That the plaintiffs have wholly failed to prove that the income tax liability of the paper company and its affiliates for the year 1928, as finally determined by the Commissioner, was erroneous or illegal; that the plaintiffs have failed to prove that the income tax assessed and collected by credit for the year 1928 was illegally or erroneously assessed or collected.

(14) That the plaintiffs have wholly failed to allege or prove any cause of action against the defendant that entitles them to a judgment in this court.

(15) That this action should be dismissed as against the plaintiffs and defendant should have judgment for its costs and disbursements herein.

(16) That judgment in this case should be entered in favor of the defendant.

Respectfully submitted,

GEORGE F. SULLIVAN,
United States Attorney.

JOHN E. GARVEY,
Special Assistant to the Attorney General.

308 Mr. Larson: The plaintiffs at this time also make a motion for judgment, and will file a formal motion later.

The plaintiffs' motion for judgment later filed was, omitting caption, in words and figures as follows:

309 Motion By Plaintiffs For Judgment.

In the District Court of the United States In and For the District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. At Law.
United States of America, Defendant.

Come now the plaintiffs and move the Court for judgment in favor of the plaintiffs as prayed in the petition herein, together with interest thereon until payment or refund thereof, as provided by law, and for the plaintiffs' costs of suit herein, and that the Court adjudge and decree that the claim of the plaintiffs against the defendant is a valid claim, that the whole thereof is justly due from the defendant, and that the defendant's answer and objections thereto are without merit and are overruled.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiffs,
1260 Northwestern Bank Building,
Minneapolis, Minnesota.

Cobb, Hoke, Benson, Krause & Faegre,
Of Counsel.

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310 The Court: The record may show that permission is given to the plaintiffs to file their written motion for judgment later, and the record may also indicate that in the event the Court denies the motion, an exception is granted to the plaintiffs.

Mr. Larson: So that the record may be clear as to the effect of the stipulations that have been read, the trustees do now move the Court to reopen law case Number 3391 for the purpose of receiving in evidence in that case, and the trustees do so move the Court, that the evidence in this case Number 11,640 may be received in evidence in case Number 3391 so far as consistent with the stipulations already filed and received by the Court.

Mr. Garvey: The defendant at this time objects to the admission in evidence of the stipulation as offered, and the facts as offered, on the ground that it is not in any way pertinent to any issue properly before this Court; that such evidence has to do entirely with the merits of the withholding tax assessment, as to the correctness of the determination of withholding tax liability, and the pleadings and the evidence show that the taxpayer did not file with the Commissioner of Internal Revenue any claim for refund of the claimed overpayment of withholding taxes assessed for the year 1921.

The Court: Well, I will grant the motion with the understanding that the testimony in Case Number 11,640 will be received in so far as it may be pertinent, and subject to the objections that have heretofore been indicated in the record, touching upon the competency and relevancy of such evidence.

Mr. Garvey: Exception please.

The stipulation offered and received in evidence in Case Number 11,640, omitting caption, was in words and figures as follows:

311

Stipulation.

In the District Court of the United States in and for the District of Minnesota, Fourth Division.

In the Matter of

Minnesota and Ontario Paper Company, a corporation, Debtor.

In the Matter of the Claim of the United States of America.

In Consolidated Proceedings for Reorganization of a Corporation No. 11640.

It is hereby stipulated and agreed that the matters herein set out shall be treated by the Court and the parties as true and established, subject, however, to the reserved right of both parties to object to the materiality or relevancy of the same, and subject also to the reserved right of both parties to offer testimony or evidence in respect of other or further facts not inconsistent with the matters herein stipulated as true and established:

I.

a. Minnesota and Ontario Paper Company is a corporation organized and existing under the laws of the State of Maine. It is hereinafter referred to as the Paper Company.

b. Fort Frances Pulp and Paper Company, Limited, is a corporation organized and existing under the laws of
312 the Province of Ontario, Canada. It is hereinafter referred to as the Fort Frances Company.

c. Ontario and Minnesota Power Company, Limited, is a corporation organized and existing under the laws of the Province of Ontario, Canada. It is hereinafter referred to as the Power Company.

II.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer now are and at all times since September 29, 1934, have been, pursuant to an order of this Court that day made and entered under Section 77B of the Bankruptcy Act, the duly appointed, qualified, and acting trustees of the estate of the Paper Company, debtor. Between July 11, 1934, and said September 29, 1934, C. T. Jaffray and R. H. M. Robinson, pursuant to an order of this Court made and entered under said Act on July 11, 1934, were the duly appointed, qualified, and acting temporary trustees of the estate of the Paper Company, debtor. From November 30, 1931, until their appointment as such temporary trustees on July 11, 1934, Jaffray and Robinson were the duly appointed, qualified, and acting receivers of the Paper Company.

III.

From 1917 to 1920, inclusive, the Paper Company owned shares of capital stock in and for income-tax purposes was affiliated with the following corporations: International Lumber Company, Rainy River Improvement Company, Minnesota, Dakota and Western Railway Company, Falls
313 Lumber and Coal Company, Watrous Island Boom Company, and International Insulation Company. From 1921 to 1925, inclusive, the Paper Company owned shares of capital stock in and for income-tax purposes was affiliated with said named corporations except International Insulation Company. From 1926 to 1928, inclusive, the Paper Company owned shares of capital stock in and for income-tax purposes was affiliated with all said named corporations together with Minnesota Forest Products Company, a corporation.

During each of said three periods the annual earnings or net income of the Paper Company and its said affiliates were consolidated for income-tax purposes. All taxes paid on such consolidated earnings or net income have been paid by the Paper Company.

IV.

a. The Paper Company was organized in 1908 as the Minnesota and Ontario Power Company; its name was changed in 1918 to the Minnesota and Ontario Paper Company.

b. Upon organization the Paper Company built a newsprint mill at a power site on the Rainy River at International Falls, Minnesota. The Rainy River is part of the boundary between the United States and Canada. After a few years the output of the International Falls mill was inadequate to meet the demands of the Paper Company's customers, and steps were taken by the Paper Company to establish another newsprint paper mill on the Canadian side of the
314 power site in the Town of Fort Frances, Ontario. For that purpose the Paper Company caused the Power Company, all of whose capital stock the Paper Company then and at all times since has owned, to develop the power on the Canadian side of the Rainy River in Fort Frances, and to erect there a second newsprint paper mill, which was completed in 1914. At about the same time the Paper Company caused the Fort Frances Company to be organized to operate this second mill, and took title to all the latter's then-issued capital stock, which consisted of 500 shares; in 1920 the Fort Frances Company issued 28,100 additional shares, all of which became and have since been owned by the Power Company.

c. The newsprint paper mill at Fort Frances has ever since erection been owned by the Power Company, but has at all times been operated by the Fort Frances Company under lease from the former. The Fort Frances Company has never had any business other than the operation of said mill.

d. In addition to holding title to the newsprint paper mill the Power Company has been engaged solely in the production and sale of electric power to the Fort Frances Company and to the inhabitants of the Town of Fort Frances and of the Township of McIrvine in Canada. By far the greater proportion of the power has at all times been furnished to and consumed by the Fort Frances Company. The power site was developed by the Power Company for the purpose of supplying electric power for the operation of its
315 newsprint paper mill. The furnishing of electricity to the inhabitants was imposed as a condition of the granting of the right to develop the power site.

e. About 1909 the Paper Company, upon commencement of its newsprint manufacturing operations, organized a sales department for the purpose of selling and it did sell its prod-

ect to newspaper publishers in the Middle West of the United States. The demand for newsprint paper soon exceeded the productive capacity of the International Falls mill alone, and ever since the commencement of operations at the Fort Frances mill the newsprint paper necessary to meet this excess demand has been supplied to the Paper Company in large part by the Fort Frances Company. Prior to 1921 the paper furnished to the Paper Company by the Fort Frances Company was furnished pursuant to written contracts between them. A true copy of the contract in effect for 1920, omitting signatures, is attached as Exhibit A and by reference is made a part hereof.

f. Since 1920 there have been no written contracts respecting newsprint paper supplied to the Paper Company by the Fort Frances Company. Since the beginning of 1921 the practice of the two companies as respects newsprint paper supplied to the Paper Company by the Fort Frances Company has been as follows:

From time to time the Paper Company advises the Fort Frances Company at Fort Frances that the Paper
316 Company requires certain quantities of newsprint paper. Upon receipt of such advice the Fort Frances Company regulates manufacturing operations of the Fort Frances mill so as to turn out quantities of paper as required by the Paper Company. As the manufactured paper comes from the paper machines, it is wrapped, weighed, and delivered to railroad carriers by loading into freight cars held in readiness to receive the same on the tracks on the Fort Frances mill property. At the time of delivery of the paper to the carriers, the Fort Frances Company invoices the Paper Company for the paper then delivered. A specimen copy of an invoice used in an actual transaction is attached as Exhibit B and by reference is made a part hereof. All invoices used have been substantially identical with that shown in Exhibit B and have been filled out or completed substantially in the manner therein shown.

All shipping instructions to carriers covering paper supplied as aforesaid have been furnished and given to the carriers by the Paper Company. All transportation charges from the Fort Frances mill have been paid by the Paper Company. Practically all the paper supplied to the Paper Company has been shipped by the Paper Company into the United States. All Consumption Entry Papers (commonly known as customs papers) relating to the paper so shipped have been arranged for and signed by the Paper Company; a specimen copy of Consumption Entry Papers used in an ac-

tual transaction is attached as Exhibit C and by refer-
317 ence is made a part hereof. All Consumption Entry Papers used have been substantially identical in form with Exhibit C and have been filled out or completed substantially in the manner shown on said exhibit.

At no time has the Fort Frances Company had storage facilities for any substantial amount of manufactured newsprint paper. Its storage capacity in respect of such paper has never been in excess of approximately 100 tons. Newsprint paper has been manufactured at the Fort Frances mill only pursuant to orders for the same already in hand.

All paper manufactured at the Fort Frances mill and supplied to publishers in the United States through the Paper Company has been supplied under and pursuant to a uniform type of written agreement; a specimen copy of such written agreement is attached as Exhibit D. The Paper Company has made all financial and credit arrangements with the publishers. All accounts with the publishers have run in the name of the Paper Company, which has made all collections upon the same. The Paper Company has charged interest at the rate of 7% per annum on unpaid publishers' accounts. At no time has the Paper Company been called upon to make or has made any accounting to the Fort Frances Company in respect of publishers' accounts, financial and credit arrangements with publishers, or payments received or collected upon publishers' accounts.

g. At no time has the Fort Frances Company had any selling organization of its own. During all years since
318 and including 1921, there has been an established practice in the newsprint paper industry, in instances where the manufacturer does not have a selling organization of his own, of disposing of his product to independent distributors or selling concerns at prices which yield to the manufacturer 97% of the prevailing market price received by the independent distributors or selling concerns from the publishers or consumers.

The price charged the Paper Company by the Fort Frances Company for newsprint paper supplied to the former as stated above has at all times since the beginning of 1921 been 97% of the prevailing market price charged to the newspaper publishers.

The amount of newsprint supplied to the Paper Company by the Fort Frances Company under the practice described above from 1921 to 1927, inclusive, together with the annual total price charged the Paper Company for the same and also the average price per ton is as follows:

Year	No. of Tons	Net Credits from Sales to M & O P. Co.	Average per Ton
1921	31,194.399	$3,030,314.02	$97.14
1922	37,885.930	2,617,135.31	69.08
1923	35,066.981	2,551,124.54	72.75
1924	38,172.5015	2,743,120.50	71.86
1925	41,235.419	2,799,294.94	67.89
1926	46,888.6095	2,956,304.71	63.05
1927	62,208.5835	3,927,748.58	63.05

h. The books of both the Paper Company and the Fort Frances Company have at all times mentioned been kept on the accrual basis, and returns of income to the United
319 States Government by the Paper Company have been made on that basis. From 1921 to 1926, inclusive, neither the Paper Company nor the Fort Frances Company entered on its books any accruals in respect of any interest on unpaid balances owing for newsprint supplied to the Paper Company by the Fort Frances Company. During the year 1926 changes were made in the accounting practices of both corporations, and the Paper Company then set up on such balances, which were in the form of open accounts, accrued interest for 1925 and 1926 in favor of the Fort Frances Company. In 1927 further accounting changes were made, and in connection therewith credits were then set up on the Paper Company's books in favor of the Fort Frances Company for interest accrued on such balances owing the Fort Frances Company for 1921 to 1924 inclusive. The amounts entered as aforesaid are as follows:

Interest for Year	Year in which entered	Interest credited to account of Fort Frances Company
1921	1927	$164,525.98
1922	1927	228,928.37
1923	1927	238,371.06
1924	1927	257,143.82
1925	1926	299,172.58
1926	1926	310,593.23

The interest so credited was computed at the rate of 6% per annum. Entries corresponding to the foregoing entries made on the books of the Paper Company were made at the same time on the books of the Fort Frances Company. Copies of entries made by the Paper Company in respect of said interest credits are attached hereto as Exhibit E, which by ref-
320 erence is made a part hereof. No net amount of interest was credited in favor of the Fort Frances Company for 1927. In that year the Paper Company paid and discharged its obligation to the Fort Frances Company for all unpaid newsprint purchases, together with interest therefor on open account, by the transfer to the latter of certain

assets; no payment of the interest accruals in favor of the Fort Frances Company had been made prior to that time.

i. During 1921 to 1927, inclusive, the Paper Company owned bonds of the Power Company, issued by the latter to finance the construction of the power development and the Fort Frances newsprint mill, as well as to finance additions to said mill from time to time. Interest upon such bonds received by the Paper Company was reported to the United States Government as taxable income, and was in the amount of $210,000 for each of the years 1921 to 1924, inclusive, in the amount of $277,500 for 1925, in the amount of $300,000 for 1926, and in the amount of $390,000 for 1927.

j. The following is a statement of the interest transactions between the Paper Company and the Fort Frances and Power Companies for 1921 to 1927, inclusive, on account of the open accounts set up in respect of newsprint paper supplied to the Paper Company by the Fort Frances Company, and on account of interest on the bonds of the Power Company held by the Paper Company:

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Year	Interest Charged to Paper Company by Ft. Frances Co. on open account	Interest credited to Paper Co. by Ft. Frances Co. on open account	Interest credited to Paper Co. by Power Co. on bonds
1921	$164,525.98	—	$210,000.00
1922	228,928.37	—	210,000.00
1923	238,371.06	—	210,000.00
1924	257,143.82	—	210,000.00
1925	299,172.58	—	277,500.00
1926	310,593.23	—	300,000.00
1927	—	$369,966.78	390,000.00

k. The above interest paid by the Paper Company to the Fort Frances Company in the year 1927 was reported by the latter for income-tax purposes to the Government of the Dominion of Canada as income received and a tax has been paid thereon by the Fort Frances Company to the Canadian Government. No income tax return of any nature and no payment of income tax of any nature was made to the United States by the Fort Frances Company in respect of the years 1921 to 1927 inclusive. Neither the Paper Company nor the Fort Frances Company reported the interest shown on Exhibit E as taxable income of the Fort Frances Company or paid a tax thereon to the United States for said Fort Frances Company.

All cash payments made from time to time from 1921 to 1927, inclusive, by the Paper Company to or for the account of the Fort Frances Company on open account were paid in Canadian funds.

In arriving at its final income-tax liability for the years 1921 to 1926, inclusive, the Commissioner, in determining the net taxable income of the Paper Company for each of said years allowed the Paper Company to offset the respective amounts of interest set forth in subparagraph j above as interest due, payable, and credited to the Fort Frances Company, against interest credited to the Paper Company by the Power Company and other Canadian subsidiaries of the
322 Paper Company, The Commissioner reduced the Paper Company's net taxable income accordingly. On July 7, 1933, the Paper Company and the Commissioner entered into a closing agreement covering income-tax liability for the years 1922 to 1928, inclusive, pursuant to Section 606 of the Revenue Act of 1928, on Commissioner's Form 866. Such of the aforesaid offsets as related to 1922 to 1926, inclusive, were reflected in the amount of tax determined for each of said years in said closing agreement.

l. In October, 1933, the Paper Company requested the Commissioner, pursuant to the provisions of Section 240 (f) of the Revenue Act of 1926 and of Section 240 (d) of the Revenue Acts of 1921 and 1924, to consolidate the accounts of the Paper Company, the Fort Frances Company, and the Power Company. The Commissioner has not acted upon said request and consolidation has not been made.

m. On February 14, 1928, the Paper Company filed a withholding-tax return on Form 1042 for the year 1927 and paid a withholding tax of $39.00 thereon. A true copy of said return is hereto attached as Exhibit F and by reference is made a part hereof.

On March 1, 1928, the Paper Company filed a withholding-tax return on Form 1042 for the year 1927, and paid a withholding tax of $12.01 thereon. A true copy of said return is hereto attached as Exhibit G and by reference is made a part hereof.

Attached to Exhibits F and G and filed with the same were returns on Form 1115 prepared by all the parties listed on said exhibits.

On March 3, 1928 the Paper Company filed two withholding-tax returns on Forms 1013 for the year 1927, and paid
323 withholding taxes thereon in the amounts of $822.75 and $11,712.92, respectively. Copies of said returns are hereto attached as Exhibits H and I, respectively, and by reference are made parts hereof.

The Paper Company filed no withholding-tax returns for the year 1927 other than Exhibits F to I, inclusive.

On July 10, 1933, the Commissioner, under the provisions of Section 3176, Revised Statutes, prepared and filed a withholding-tax return for the Paper Company reporting $1,498,734.94 paid by the Paper Company to the Fort Frances Company during the year 1927, and determining withholding tax, penalty, and interest in respect thereof in the respective amounts of $202,329.22 tax, $50,582.31 penalty, and $61,530.25 interest, and assessed against the Paper Company the total amount of $314,441.78. A copy of said return is attached hereto as Exhibit J and by reference is made a part hereof.

Not later than March 15 of each of the years 1922 to 1927, inclusive, the Paper Company filed with the Collector for the preceding year on Form 1042, its "Annual Return of Income Tax to be Paid at Source", and paid to the Collector the amount of tax shown as due thereon. Such returns were substantially similar to Exhibits F and G. In each such return no report was made or tax paid in respect of any interest paid to or accrued in favor of the Fort Frances Company upon unpaid balances for newsprint paper supplied by the Fort Frances Company to the Paper Company as aforesaid
324 and nowhere upon such return did the name of the Fort Frances Company appear.

On July 10, 1933, the Commissioner, under the provisions of Section 3176, Revised Statutes, prepared and filed a withholding-tax return for the Paper Company reporting $609,765.81 paid by the Paper Company to the Fort Frances Company during the year 1926, and determining withholding tax, penalty, and interest in respect thereof in the respective amounts of $82,318.38 tax, $20,579.60 penalty, and $29,972.90 interest, and assessed against the Paper Company the total amount of $132,870.88. A copy of said return is attached hereto as Exhibit K and by reference is made a part hereof.

On October 4, 1932, similar returns were prepared by the office of the Collector for the years 1921 to 1925, inclusive, and on July 10, 1933, the Commissioner made additional assessments of withholding taxes based on said returns for the years 1921 to 1925, inclusive, all as set forth in detail hereinafter.

The withholding tax for the year 1926 upon $310,593.23 is $41,930.08; penalty of 25% thereof would be $10,482.52. Interest on said tax computed to July 10, 1933, would be $15,269.53.

Form 1042 for all years herein mentioned has been substantially identical with Form 1042 used by the Commissioner in preparing Exhibits J and K. Form 1042 was prepared by the Commissioner.

325 n. Neither the Commissioner nor anyone else acting or purporting to act in behalf of the United States made any assessment of, issued any notice of deficiency as respects, or entered upon any proceedings to collect any withholding taxes claimed to be owed by the Paper Company by reason of the interest credits to the Fort Frances Company hereinbefore set forth until on or about July 10, 1933, at which time the Commissioner assessed against C. T. Jaffray and R. H. M. Robinson as receivers of the Paper Company withholding taxes, together with interest and penalty, as follows:

Year	Interest claimed to be subject to withholding tax	Tax thereon	Penalty 25%	Interest on tax at 6% per annum to July 10, 1933	Total tax, penalty, and int.
1921	$ 164,525.98	$ 16,452.60	$ 4,113.15	$ 10,556.14	$ 31,121.89
1922	228,928.37	28,616.05	7,154.01	16,643.35	52,413.41
1923	238,371.06	29,796.38	7,449.10	15,542.07	52,787.55
1924	257,143.82	32,142.98	8,035.75	15,560.72	55,739.45
1925	299,172.58	37,396.57	9,349.14	15,860.24	62,605.95
1926	609,765.81	82,318.38	20,579.60	29,972.90	132,870.88
1927	1,498,784.94	202,329.22	50,582.31	61,530.25	314,441.78
	$3,296,842.56	$429,052.18	$107,263.06	$165,665.67	$701,980.91

o. Against the assessment of $31,121.89 for withholding taxes, penalty, and interest for 1921, the Commissioner on

July 20, 1933, applied as a credit the amount of $30,810.46, consisting of $24,034.76 interest on an overpayment of income taxes by the Paper Company for the year 1922, $1,235.69 interest on such an overpayment for the year 1923, $3,038.92 interest on such an overpayment for the year 1924, and $2,501.09 interest on such an overpayment for the year 1925.

326 p. Of the amount of $701,980.91 assessed as stated in subparagraph m above, the balance of $671,170.45 remaining after deduction of $30,810.46 as set out in subparagraph o above is the claim filed by the United States in this proceeding.

q. The amount of $609,765.81 upon the basis of which the Commissioner assessed withholding taxes for 1926, as set out in subparagraph n above, consists of the sum of the $299,172.58 entered on the books of the Paper Company for 1925 and the $310,593.23 entered on the books of the company for 1926. The amount of $1,498,734.94 upon the basis of which the Commissioner assessed withholding taxes for 1927, as set out in subparagraph n above, consists of the sum of the amounts upon which the Commissioner has computed withholding taxes for each of the preceding years 1921 to 1926 inclusive, which is shown as follows:

Year for which interest was credited	Amount subjected to tax in 1927 as for 1927
1921	$164,525.98
1922	228,928.37
1923	238,371.06
1924	257,143.82
1925	299,172.58
1926	310,593.23
	$1,498,734.94

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ARTHUR W. CARNDUFF,
HERBERT S. FESSENDEN,

GEORGE F. SULLIVAN,
U. S. Dist. Atty.

JOHN E. GARVEY,
Special Assistant to the Attorney General.
Attorneys for the United States of America and for the United States Collector of Internal Revenue for the District of Minnesota.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for the Paper Company.

Cobb, Hoke, Benson, Krause & Faegre,
Of Counsel.

Dated April 30th, 1936.

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228 Exhibit A.

Memorandum of Agreement made by and between Fort Frances Pulp & Paper Company, Limited, hereinafter called "Fort Frances Company", and Minnesota & Ontario Paper Company, hereinafter called "Minnesota Company".

Witnesseth, the Fort Frances Company hereby agrees to sell and the Minnesota Company hereby agrees to buy Thirty Thousand (30,000) tons, more or less, of newsprint paper during the calendar year of 1920, subject to the following conditions:

(1) Delivery of the paper to the Minnesota Company shall be made on board cars at Fort Frances, Ontario;

(2) The price shall be adjusted from month to month and shall be a price equal to the average price at which the Minnesota Company may sell paper during the month, less a discount of 5%;

(3) Causes beyond the control of either party, such as strikes, fires, casualties at the mills, or other difficulties which make it impossible to fulfill the requirements of this contract, shall suspend it during the existence of such disability.

Executed in triplicate at Fort Frances, Ontario, this 1st day of January, 1920.

FORT FRANCES PULP & PAPER CO. LTD.,

By .....,
Vice-President.

MINNESOTA & ONTARIO PAPER COMPANY,

By .....,
Vice-President.

Exhibit B

Fort Franc[illegible] Pulp & Paper Compe[illegible]y, Ltd.

Fort Frances, Ont., Dec. 22, 1923. 192

Sold To
MINNESOTA & ONTARIO PAPER CO.
International Falls, Minn.

Car No.		Rolls Newsprint	Pounds	At Per Cwt.	Value
Sou	159422	39	54572	$3.75	$2046
Soo	34316	88	62228	"	2334
C&NW	141678	80	49934	"	1835
			166734		$6215
				2½% Can. Ex. Tax	140
				Total $	$6355

Newsprint Par. 1678-Free

Certified Correct
MINNESOTA & ONTARIO PAPER CO.
Per [signature]
Agent for Importer.

329

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TREASURY DEPARTMENT
Cust. Form 3067-A
T. D. 38880
O. Apr. 17-28

U. ED STATES CUSTOMS SERVICE

Exhibit C

DECLARATION OF NOMINAL CONSIGNEE, PURCHASER, OR ULTIMATE CONSIGNEE

(THIS DECLARATION MUST BE PRESENTED TO THE COLLECTOR OF CUSTOMS AT PORT OF ENTRY WITHIN NINETY DAYS AFTER DATE OF BOND.)

DECLARATION OF NOMINAL CONSIGNEE.

I, the undersigned, herewith declare that the consignee who made the entry covering the merchandise described below is not the actual owner or ultimate consignee of the said merchandise, but that such entry exhibits a full and complete account of all the merchandise imported in the vessel indicated

.....

by .....

of address .....

except

I also declare to the best of my knowledge and belief that all statements appearing in the entry and in the invoice or invoices and other documents presented therewith and in accordance with which the entry was made, are true and correct in every respect; that the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise; and that if at any time hereafter I discover any information showing a different state of facts, I will immediately make the same known to the Collector of Customs at the port of entry.

I further declare, if the merchandise was entered by means of a sight or draft basis invoice, that no agreement existing for any of the merchandise covered by the said entry or by the invoice or invoices covering the same between the said seller or shipper and any other person, whether the purchaser, his or their agent, or any other person, has been entered into, and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoices could be procured at that time.

☐ Principal.
☐ Member of the firm.
☐ ..... of the corporation.
(Title.)

(Signature.)

(Address.)

Declared to before me this ..... day of .....
19..., at the port of .....

Notary Public.

Deputy Collector.

DECLARATION OF PURCHASER.

I, the undersigned, representing

MINN. & ONT. PAPER CO.,

address Int'l Falls, Minn.

in the capacity indicated herein, declare that they are the actual purchasers of the merchandise covered by the entry described above, and that they will pay all additional and increased duties imposed by Section 489, paragraph 2, of the Tariff Act of 1922, and that such entry exhibits a full and complete account of all the merchandise imported in the vessel indicated and obtained by them in pursuance of a purchase, or an agreement to purchase, except

I also declare to the best of my knowledge and belief that all statements appearing in the entry and in the invoice or invoices and other documents presented therewith and in accordance with which the entry was made, are true and correct in every respect; that the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise; and that if at any time hereafter I discover any information showing a different state of facts, I will immediately make the same known to the Collector of Customs at the port of entry.

I further declare, if the merchandise was entered by means of a sight or draft basis invoice, that no agreement existing for any of the merchandise covered by the said entry or by the invoice or invoices covering the same between the said seller or shipper and any other person, whether the purchaser, his or their agent, or any other person, has been entered into, and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoices could be procured at that time.

☐ Principal.
☐ Member of the firm.
☐ ..... of the corporation.
(Title.)

(Signature.)

Int'l Falls, Minn.
(Address.)

Declared to before me this Dec. day of .....
19..., at the port of Int'l Falls, Minn.

Notary Public.

Deputy Collector.

DECLARATION FOR MERCHANDISE OBTAINED OTHERWISE THAN BY PURCHASE OR AGREEMENT TO PURCHASE.

I, the undersigned, representing .....

.....

address .....

in the capacity indicated herein, declare that they are the ultimate consignee of the merchandise described in the foregoing declaration below, and that they will pay all additional and increased duties imposed by Section 489, paragraph 2, of the Tariff Act of 1922, and that such entry exhibits a full and complete account of all the merchandise imported in the vessel indicated and obtained by them otherwise than in pursuance of a purchase, or an agreement to purchase, except

I also declare to the best of my knowledge and belief that all statements appearing in the entry and in the invoice or invoices and other documents presented therewith and in accordance with which the entry was made, are true and correct in every respect; that the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise; and that if at any time hereafter I discover any information showing a different state of facts, I will immediately make the same known to the Collector of Customs at the port of entry.

I further declare, if the merchandise was entered by means of a sight or draft basis invoice, that no agreement existing for any of the merchandise covered by the said entry or by the invoice or invoices covering the same between the said seller or shipper and any other person, whether the purchaser, his or their agent, or any other person, has been entered into, and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoices could be procured at that time.

☐ Principal.
☐ Member of the firm.
☐ ..... of the corporation.
(Title.)

(Signature.)

(Address.)

Declared to before me this ..... day of .....
19..., at the port of .....

Notary Public.

Deputy Collector.

Entry No. ..... Consignee ..... Vessel from ..... Date 192

PACKAGES AND MARKS	SELLER OR SHIPPER	PLACE AND COUNTRY OF PURCHASE	AMOUNT PAID OR AGREED TO BE PAID IN FOREIGN CURRENCY	RATE OF EXCHANGE	APPRAISED VALUE IN FOREIGN CURRENCY	APPRAISED VALUE IN U. S. DOLLARS
2 cars	Ft.Fos.P.&P.Co.Ltd., Newsprint Paper)	Winnipeg, Can.	$ 6216			$ 6266

Mailing address of Nominal Consignee, Purchaser, or Ultimate Consignee:

MINN. & ONT. PAPER CO.,

Int'l Falls, Minn.

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TREASURY DEPARTMENT
Customs Form 7501
Dec. 1927
G. O. Aug. 30-31

Copy f. ..... Exhibit ~~C~~ C page 2.
(Collector, naval officer, statistician, etc.)

I. T. No. .....
Port from .....
Via .....
(Bonded carrier.)

CONSUMPTION ENTRY

Permit Customs Form 7501A, and triplicate copy for statistical purposes, to be presented with entry.

UNITED STATES CUSTOMS SERVICE

Collection District No. 36

Port of Int'l Falls, Minn. Entry filed Dec. 28, 1928., 192

This space for number and date of entry.

Dec. 28, 1928.

Merchandise imported by MINN. & ONT. PAPER CO.

Arrived on the M. D. & W. Ry. (Name of importing vessel or carrier. If vessel, give flag and motive power.) on Dec. 28, 1928., 192 (Date of original importation.) from Canada

MARKS AND NUMBERS.	MERCHANDISE. PACKAGES AND DESCRIPTION.	Quantity	VALUE IN FOREIGN MONEY.	ENTERED VALUE IN U. S. MONEY. Dollars only	RATE.	DUTY. Dollars.	Cts.
	Invoice No. U1688 47211 Date ....., 192, Place						
Sou 150488	99 Rolls Newsprint Paper	54572		$2046	Free	None	
Soo 24516	68 do	62230		2334	"	"	
CRNW 141678	80 do	48224		1835	"	"	
		165726		$6215			
		2½% Can. Ex. Tax		140			
				$6355			

Number of invoices ..... W. H. Entry No. ..... G. O. No. .....

I do truly declare that MINN. & ONT. PAPER CO., Address Int'l Falls, Minn.
(Name of owner, purchaser, or ultimate consignee.) (No.) (Street.) (City.) (State.)

is the Owner, Purchaser, or Ultimate Consignee of the merchandise described in this entry, and in the invoice or invoices now presented to the Collector of Customs, and that the said merchandise was imported on the date and by the vessel or conveyance of the port named above; that the invoice or invoices are in the sole, in which I received them, except as to marginal corrections; that I have not received and do not know of the existence of any other invoice, writing, paper, or agreement showing a different price, value, or description of the said merchandise, and that if at any time hereafter I shall receive any error or misstatement in the invoice or invoices now presented, or receive any information, or any invoice, paper, or writing showing a different price, cost, or value, I will immediately make the same known to the Collector of Customs at the port of entry; and I further declare if this declaration is executed by the or owner, purchaser, or ultimate consignee, that the said invoice or invoices are in all respects correct and true and truly state the price paid or to be paid for all of said merchandise or best knowledge purchased, agreed to be purchased; and if this declaration is executed by an agent, that all of the statements contained herein are correct and true to the best of my knowledge, information, and belief.

Sworn to and declared before me MINN. & ONT. PAPER CO.

at Int'l Falls, Minn. this 28. day of Dec. 1928.

W. R. Lenehan
(Deputy collector of customs, notary public.)

(Signature of owner, purchaser, or ultimate consignee.)

Agt. & Asst'y
(Signature of agent.)

33P
(Title of officer of corporation, member of firm, or agent.)

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Exhibit 8.

MEMORANDUM OF AGREEMENT made and entered into by and between

Minnesota & Ontario Paper Company

a corporation organized and existing under and by virtue of the laws of the State of Maine, hereinafter called the Seller, and

of

hereinafter called the Purchaser.

WITNESSETH: That for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations by each to the other in hand paid and the mutual covenants and agreements hereinafter set forth, the Seller agrees to sell and deliver and hereby does sell and the Purchaser agrees to buy and pay for and hereby does buy

tons of roll news print paper each and every year for the period of ten (10) years, commencing January 1st, 1931 and ending December 31st, 1940, both days inclusive, to be used for printing editions of

deliverable in ordered lots only, throughout each month at Seller's convenience, in monthly installments of approximately

tons, not cumulative, at the price and upon the terms herein specified, and the Seller is hereby specifically authorized to ship the above named monthly tonnage each month during the period covered by this contract, provided, that there may be an accumulation of paper from month to month in order to make up carload lots.

1. SPECIFICATIONS. (a) The paper shall be substantially of the standard of quality of news-print paper manufactured by the Seller, and of approximately the following basis of weight: 32x48-24 500, at mill, with a leeway of one pound up or down on average weight of all paper shipped hereunder. It shall be manufactured at the mills of Minnesota & Ontario Paper Company at International Falls, Minnesota, or Port Frances Pulp & Paper Company, Ltd. at Port Frances, Ontario, or at other mills, at the option of the Seller.

(b) The Purchaser shall furnish to the Seller, by the 15th of each month, complete specifications of the different widths of rolls hereafter specified in Section (d) for shipments to be made the succeeding month, but if in any month no specifications are furnished by the Purchaser, the Seller may ship any of the widths specified in Section (d).

(c) Diameter of rolls shall be approximately 30 inches.

(d) Width of rolls shall be:

2. PRICE: The price, f. o. b. cars at mill, on gross weight of rolls, including paper but excluding cores, shall be the "average Eastern price", determined for each period as hereinafter provided, plus Forty Cents per one hundred pounds during the years 1931 and 1932 and such "average Eastern price" plus Fifteen Cents per one hundred pounds during the years 1933 to 1940, both inclusive. The "average Eastern price" for each six months of the years 1931, 1932 and 1933 shall be determined by ascertaining the announced standard contract price to publishers in the United States, for news print paper sold under regular quarterly contracts, effective in January and July of the half year in operation, of each of the following: International Paper Company; the G. H. Mead Company, for paper from the Rock Rin, Maine mill of the Androscoggin River Pulp and Paper Company, Limited, (in the event the G. H. Mead Company fails to sell paper in the United States from said mill, then the Androscoggin River Pulp and Paper Company, Limited, for paper elsewhere); and the Canadian Export Company, Limited, for paper from the East Angus Mill of the Brompton Pulp and Paper Company, Limited, (in the event the Canadian Export Company, Limited, fails to sell paper in the United States from said mill, then the Brompton Pulp and Paper Company, Limited, for paper elsewhere); and taking the average thereof by adding such three prices together and dividing the sum thereof by three. The "average Eastern price" for each of the years succeeding 1933 to 1940, both inclusive, shall be determined by ascertaining the announced standard contract price to publishers in the United States, for news print paper sold under regular quarterly contracts, effective in January of the year in question, of each of the foregoing (three companies or mills and likewise taking the average thereof by adding such three prices together and dividing the sum thereof by three.

(a) In the event that any of the foregoing companies or mills (or any substituted company or mill hereunder) shall cease to sell paper in the United States during the period of this contract, the Seller shall name another company or mill as substitute therefor.

(b) In the event of any dispute between the parties as to the "average Eastern price" described herein, the same shall be ascertained by arbitration, each party hereto appointing one arbitrator and the two arbitrators so chosen appointing the third, the finding of a majority of whom shall be binding upon the parties hereto; pending such arbitration, however, 75% of paper shipped shall be paid for by the Purchaser as rendered by the Seller, to be subsequently readjusted in accordance with the finding of the arbitrators.

(c) Any government tax or duty imposed upon the sale, transportation or importation of the paper to be furnished hereunder shall be assumed and paid by the Purchaser in addition to the price named as above.

3. TERMS: Bill each not later than the 15th of the month for all paper shipped the previous month— net cash thirty days from date of invoice—subject to the right reserved by Seller to file only with right draft attached to Bill of Lading. Interest at rate of Seven per cent per annum shall be paid on all amounts remaining unpaid after due dates. Payments shall be made in New York, Chicago or Minneapolis exchange.

4. DELIVERY AND TONNAGE: Delivery shall be on board cars at point of manufacture. Routing is reserved to Seller.

The Seller may from time to time, by notice mailed to the purchaser on or before the tenth day of any month, increase the monthly installment for the succeeding month or specified months by not more than fifteen per cent and the tonnage to be delivered hereunder shall thereupon be correspondingly increased.

The Purchaser may from time to time, by notice mailed to the Seller on or before October 1st of any year, reduce the tonnage for the next succeeding year to, but not below, the actual requirements of news print paper for that year. The tonnage annually deliverable in succeeding years, however, shall be as herein provided unless the Purchaser shall again similarly reduce the same for any other year.

In the event that at any time during the period of this contract the Purchaser shall require news print paper in addition to the tonnage herein provided, the Purchaser shall first offer in writing to buy the same of and from the Seller under the terms of this agreement; and the Purchaser hereby specifically covenants and agrees not to buy paper of or from any other than the Seller unless and until it has so offered to buy the same from the Seller under the terms hereof and the Seller has declined to furnish it.

5. CORES: Cores may be either iron or paper at the option of the Seller. Iron cores shall be paid for by the Purchaser at Four Cents per inch and Paper Cores at Two Cents per inch. Upon return of the same to the Seller at mill from which shipped, with freight and any other charges prepaid, in good condition, within ninety days from the receipt thereof by the Purchaser, the Seller agrees to pay to the Purchaser an amount equivalent to the price paid therefor by Purchaser to Seller.

6. CLAIMS: No allowance shall be made for waste or damaged paper or for paper left on cores.

In case of claim of any nature arising on any shipment under this contract, the Purchaser shall notify the Seller thereof by writing within fifteen days after receipt of such shipment at destination, and in case of failure so to do the Purchaser shall be deemed to have waived such claim.

No claim by the Purchaser for consequential damages shall be made or allowed, any and all claims for such damages being hereby expressly waived by the Purchaser.

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Exhibit "D"
page 8

7. **CONTINGENCIES:** In the event of war, revolution, insurrection or public disturbance in or involving the United States or Canada, or of fire, storm, flood, low water, strike, lockout, combination of workmen, accident, embargoes, delay, refusal or failure of carriers or contractors, governmental interference, injunction or other court process, act of Providence, or any cause whatsoever beyond the control of the Seller, discontinuing or interfering with the normal monthly production of the paper herein described at the combined mills of the Minnesota & Ontario Paper Co. and Port Frances Pulp & Paper Co., Limited, (which normal monthly production it is agreed shall be computed on the basis of 550 tons per working day), or the supply or transportation of any material employed in or about the manufacture of said paper, deliveries under this contract may be suspended in whole or in part during the period required to remove the cause or repair the damage, and the total quantity deliverable under this contract may be reduced in proportion to the decrease in the normal monthly production of paper, and the parties hereto shall be relieved of liability with respect thereto.

8. **CANCELLATION:** If the Purchaser shall fail to make any payment when due or to pay at maturity any note given in settlement or on account, or shall fail to accept and pay any draft drawn by the Seller for all or any part of the purchase price, or shall fail to fulfill any provision of this contract, and such default shall continue for thirty days, the Seller may, at its option, cancel this contract by mere notice in writing, refuse to furnish any more paper hereunder and declare all obligations of the Purchaser for all paper furnished hereunder due forthwith notwithstanding any other terms hereof; provided, however, that the Purchaser shall be and remain liable to the Seller for all loss and damage sustained by reason of such failure or breach, and because of the difficulty of ascertaining the loss or damage which the Seller may incur by any breach or the failure of the Purchaser to take paper as herein contracted for, the sum of Fifty Cents for each one hundred pounds of paper remaining undelivered hereunder is hereby agreed upon and fixed as liquidated damages on account thereof, which the Purchaser hereby covenants and agrees to pay the Seller as such liquidated damages.

9. **THE PARTIES HERETO EXPRESSLY RELEASE EACH OTHER** from any and all claims arising or which may arise on behalf of either party against the other by reason of any proceedings under the terms of an agreement between the Attorney General of the United States, as Trustee, and the Seller and certain other manufacturers of newsprint paper, dated November 20th, 1917.

It is further understood and agreed that the seller has offered paper to the Purchaser in accordance with the provisions of said agreement; that this Contract is made with full knowledge on the part of the Purchaser of the provisions of said agreement, that the Purchaser hereby expressly waives the benefit of any and all the provisions of said agreement and represents that the Purchaser desires to make this contract regardless of said agreement; that in entering into this Contract the Purchaser is acting in the Purchaser's own interest; and that this Contract is entered into by the Seller at the sole request of and in deference to the wishes of the Purchaser.

10. **THIS CONTRACT** is executed and delivered in duplicate original in Minnesota; it is complete in itself and sets forth the agreement and conditions between the parties hereto; it shall be construed to be a Minnesota Contract and according to the laws of the State of Minnesota; and shall bind and inure to the benefit of the successors and assigns of the parties hereto respectively, except that it shall not be assigned by either party save by consent in writing duly executed by an authorized officer of the other. No alteration, change or modification shall at any time be made in this Contract except after action by the executive officers of the Seller evidenced by a written endorsement hereon signed by one of said officers.

This Contract is subject to approval by an executive officer of the Seller by written endorsement in Minnesota and shall not be binding on the Seller unless and until so approved; and it will not be considered for approval unless it is signed in duplicate by the Purchaser and received by the Seller within ten days from the date hereof.

Dated and delivered at International Falls, State of Minnesota, this

day of 1930.

MINNESOTA & ONTARIO PAPER COMPANY

By

By

Signed and approved at International Falls, Minn.

MINNESOTA & ONTARIO PAPER COMPANY.

By

Vice-President.

MINNESOTA & ONTARIO PAPER COMPANY

TO

THE

Uniform

Sales Agreement

1921-1930

291

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Exhibit E

Journal Voucher

MOP 15 No. 435

Minnesota and Ontario Paper Co.

Date: May 22, 1926

Debits: General and Operating Acc'ts.	Folio	Description	Credits as of Dec. 31, 1925: Folio	Credits: General and Operating Accounts	Credits: Sundry Ledger
299,172.58	A	Surplus Account			
		To Sundry Ledger			
		Fort Frances Pulp & Paper Co. Ltd. A/C			299,172.58
		Crediting Fort Frances Pulp & Paper Co. Ltd. with interest on average monthly balance @ 6% per annum from Dec. 1, 1924 to Dec. 31, 1925 computed as follows:			
				Balance	
		Dec. 31, 1924		4,649,361.69	
		Jan. 31, 1925		4,442,984.72	
		Feb. 28, 1925		4,788,321.86	
		Mar. 31, 1925		4,792,187.57	
		Apr. 30, 1925		4,797,691.07	
		May 31, 1925		4,708,329.49	
		June 30, 1925		5,004,055.89	
		July 31, 1925		5,117,259.04	
		Aug. 31, 1925		5,155,098.85	
		Sept. 30, 1925		5,257,410.22	
		Oct. 31, 1925		5,283,928.35	
		Nov. 30, 1925		5,338,836.18	
		Dec. 31, 1925		5,485,261.58	
			13)	64,820,726.51	
		Average Balance		4,986,209.73	
		Interest @ 6% per annum		299,172.58	

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Journal Voucher

MOP 15 No. 1214

Minnesota & Ontario Paper Co.

Date: December 1926

Debits: General and Operating Accts.	Folio		Folio	Credits: Sundry Ledger
310,593.23	A	Interest Paid.		
		Fort Frances Pulp & Paper Co. Ltd.	C	310,593.23
		Crediting Fort Frances Pulp & Paper Co. Ltd. with interest at 6% per annum for year 1926 on average credit balance of Minnesota & Ontario Paper Co. as per details in working papers.		

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Journal Voucher

MOP 15 No. 279

Minnesota & Ontario Paper Co.

Date: May 31, 1927

Debits: General and Operating Acc'ts.	Folio	Description	Folio	Credits: General and operating acc'ts.
888,969.23	A	Private Ledger		
		Surplus account		
		To	a/c	888,969.23
		Sundry Ledger		
		Fort Frances Pulp and Paper Co.		
		To credit Fort Frances Pulp and Paper Company Limited with interest at 6% accrued on indebtedness of Minnesota and Ontario Paper Co. Ltd. for years 1921, 1922, 1923 and 1924 as per schedule on file.		
		Year 1921		164,525.98
		1922		228,928.37
		1923		238,371.06
		1924		257,143.82
				888,969.23

Exhibit F
Sheet No. 1

Form 1042
U. S. Internal Revenue

Collector will stamp here the date of filing of the return in red unless dated by resident.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

For Calendar Year 1927

Do not write in this space
PAYMENT
$ 4
(Cashier's Stamp)

SEP 4 - 1928

This return should be made to the Collector of Internal Revenue for the district in which the withholding agent is located, on or before March 15, 1928, and the tax should be paid on or before March 15, 1928.

Minneapolis & Ontario Paper Company
(Name of withholding agent)
1100 Builders Exchange Building
Minneapolis, Minnesota
(Address in full)

CASH CHECK P. O. M.O.
Received Feb 14 1928
By

RETURN AUDITED

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds), rents, salaries, wages, or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 216 (a) of the Revenue Act of 1926) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payors of such income are required to withhold and deduct a tax therefrom at the rate of 5 per cent when paid to nonresident alien individuals or foreign partnerships, and 13½ per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,000, and, in addition, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1115 with his employer not later than February 1 of the succeeding year. By filing Form 1115 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable to compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1927.

INCOME RECEIVED MAR 17 1928 SORTING SEC.

Rate	Amount Paid	Tax Withheld
1½%	$ 1500 00	$ 22 50
3%	$	$
5%	$	$
13½%	$	$
Totals	$	$

A. A. Thompson
(Signature)
Assistant Auditor
(Capacity in which acting)
Minneapolis & Ontario Paper Co.

Number of Claims for Credit, Form 1115, attached to this return 0

Sworn to and subscribed before me this 13th day of February, 1928.

(Signature) Notary Public (Title)
My commission expires [illegible]

Name of Individual, Partnership, or Corporation to Which Paid	Address in Full	Amount of Income Paid	Exemptions and Credits (Attach Form 1115)	Amount Taxable	Amount of Tax Withheld
Melville Brestan	c/o Minneapolis and Ontario Paper Co. International Falls Minnesota	$ 1500 00	$ 1500	$ 300 00	$ 4 50
E. M. Ruckenson	Dilli	2700 00	1900	800 00	12 00
John Learmonth	Atti	3000 00	1500	1500 00	22 50
Totals		$ 7500 00	$ 4900	$ 2600 00	$ 39 00

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EXHIBIT F. 295

Exhibit F
Sheet No. 2
Ex - 7

Form 1042
U. S. Internal Revenue

Collector will stamp here the date of filing of the return in red unless paid by stamps.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

For Calendar Year 1927

This return must be made by the Collector of Internal Revenue for the district in which withholding agent is located, or if withholding agent is a corporation, by the collector of the district in which the principal office or place of business is located, and then not later than March 15, 1928.

Minnesota & Ontario Paper Company
(Name of withholding agent)
Northern Building
(Address in full)
Minneapolis Minnesota

Do not write
PAID
$
(Cashier's Signature)
CASH CHECK M.O.
Received
By

RETURN AUDITED

INSTRUCTIONS

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds), rents, salaries, wages, or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 216 (a) of the Revenue Act of 1926) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payors of such income are required to withhold and deduct a tax therefrom at the rate of 5 per cent when paid to nonresident alien individuals or foreign partnerships, and 13½ per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,000, and, in addition, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1115 with his employer not later than February 1 of the succeeding year. By filing Form 1115 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable to compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1927.

Rate	Amount Paid	Tax Withheld
13½%	$ 1,015.11	$ 0
5%	$	$
3%	$	$
1½%	$	$
Totals	$ 1,015.11	$ 0

A. A. Shepard
(Name)
Assistant Secretary
Minnesota & Ontario Paper Co.
(Capacity in which acting)

Number of Claims for Credit, Form 1115, attached to this return (11) 12

Sworn to and subscribed before me this 13th day of February, 1928.

E. M. Merrick
(Signature)

E. M. MERRICK
Notary Public, Hennepin County, Minn.
My commission expires (illegible)

Name of Individual, Partnership, or Corporation to whom Paid	Address in Full	Amount of Income Paid	Rate	Tax Withheld	Amount Exempted	Amount of Tax Withheld
J. D. Beaumont	Int. in O. Ry. Co.	$ 345.00	13½%	$ 1500	$ 0	$ 0
R. Kynard	"	1250.00	"	1500	0	0
A. A. Malloy	"	2100.00	"	3100	0	0
Estelle Gagné	"	1200.00	"	1500	0	0
F. A. Thompson	"	444.50	"	1500	0	0
D. B. Mitchell	"	446.75	"	2300	0	0
W. H. De Lake	"	65.00	"	2300	0	0
H. A. Robertson	"	1500.00	"	2300	0	0
Evelyn Parker	"	56.00	"	1500	0	0
C. D. Beaumont	"	40.00	"	3100	0	0
E. W. Turney	"	264.00	"	3900	0	0
Totals		$ 6,015.11		$ 24,100	$ 0	$ 0

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Exhibit 6
Sheet No. 1.

Form 1042
U. S. Internal Revenue

Collector will stamp here the date of filing if the return is not accompanied by remittance.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

For Calendar Year 1927

Do not write in this space
PAYMENT
$.....
(Cashier's Stamp)

SEP 4 1928

This return must be made by the Collector of Internal Revenue for the district in which the withholding agent is located, on or before March 15, 1928, and the tax must be paid at or before June 15, 1928.

MINNESOTA & ONTARIO PAPER COMPANY
(Name of withholding agent)
1100 BUILDERS EXCHANGE BLDG.
MINNEAPOLIS, MINNESOTA.
(Address in full)

CASH CHECK M. O.
Received
By

RETURN AUDITED

APR 19 1928

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds, notes, coupons payable to bearer or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 216 (d) of the Revenue Act of 1926) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payors of such income are required to withhold and deduct a tax therefrom at the rate of 5 per cent when paid to nonresident alien individuals or foreign partnerships, and 15½ per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,500, and, if married, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1115 with his employer [illegible] of the succeeding year. By filing Form 1115 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable to compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1927.

Rate	Amount Paid		Tax Withheld	
1½%	$ 7300	87	$ 12	01
3%	$		$	
5%	$		$	
15½%	$		$	
Totals	$ 7300	87	$ 12	01

A A Ferguson
(Signature)
Assistant Auditor.
(Capacity in which acting)

Number of Claims for Credit, Form 1115, attached to this return 3

Sworn to and subscribed before me this 29th day of February, 1928.

(Signature)
Notary Public Hennepin County, Minn.
My commission expires Oct. 27th, 1929
(Title)

Name of Individual, Partnership, or Corporation to Which Paid	Address in Full	Amount of Income Paid		Exemptions and Credits (Attach Form 1115)	Amount Taxable		Amount of Tax Withheld	
Peter Hegg	Fort Frances, Ont. 421 - 1st St.	$ 2476	18	$ 2300.	$ 176	18	$ 2	64
Mike Haley	Ft. Frances, Ont.	2724	69	2700.	24	69		37
P. Van Aletyne	Ft. Frances, Ont.	2100	00	1500.	600	00	9	00
Totals		$ 7300	87	$ 6500.	$ 800	87	$ 12	01

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C

EXHIBIT G 269

2-1 Ex. 27A

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

SUPPLEMENTARY **For Calendar Year 1927**

MINNESOTA & ONTARIO PAPER COMPANY
(Name of withholding agent)

1100 BUILDERS EXCHANGE BLDG.
MINNEAPOLIS, MINNESOTA.
(Address in full)

$ _____
(Collector's Receipt)

CASH CHECK M.O.
Received

By _____

RETURN AUDITED

INSTRUCTIONS

Every withholding agent, whether individual, corporation, or partnership, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds), rents, salaries, wages, or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 216 (a) of the Revenue Act of 1926) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payers of such income are required to withhold and deduct a tax thereform at the rate of 5 per cent when paid to nonresident alien individuals or foreign partnerships, and 13½ per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,000, and, in addition, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1111 with his employer not later than February 1 of the succeeding year. By filing Form 1111 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1927.

A. A. Fagen
(Signature)

Assistant Auditor
(Capacity in which acting)

Rate	Amount Paid	Tax Withheld
1½%	$ 29751 24	$ None
3%	$	$
5%	$	$
13½%	$	$
Totals	$ 29751 24	$ None

Number of Claims for Credit, Form 1114, attached to this return 16

Sworn to and subscribed before me this 29th day of February, 1928.

E. L. Merrick
(Signature)

Notary Public, Hennepin County, Minn.
My commission expires Oct. 25, 1928
(Title)

Name of Nonresident Individual, Partnership, or Corporation to Whom Paid	Address in Full	Amount of Income Paid	Exemptions and Credits (Check Form 1114)	Amount Withheld	Amount of Tax Withheld
Kawiuk, John	Fort Frances, Ont.	$ 2025 96	$ 3100.	$ None	$ None
Mylnechuk, John	Fort Frances, Ont.	1748 10	1900.	"	"
Fallberg, C. V.	772 Crowe Ave., Fort Frances, Ont.	1951 01	3100.	"	"
Hutchings, Herb.	418 - 2nd St. Fort Frances, Ont.	1617 96	1900.	"	"
Gray, R.	804 Scott St. Fort Frances, Ont.	1584 99	2300.	"	"
McCutcheon, John	432 - 1st St. Fort Frances, Ont.	1860 00	2700.	"	"
Benedict, Frank	525 Nelson St. Ft. Frances, Ont.	1804 12	3900.	"	"
Benedit, Jos.	309 Portage Ave., Fort Frances, Ont.	2116 34	2300.	"	"
Warren, Emmett	Fort Frances, Ont.	1531 35	2300.	"	"
Plumridge, A. L.	Fort Frances, Ont.	1635 49	3100.	"	"
Galbraith, Wm. D.	530 Scott St. Fort Frances, Ont.	1860 00	2700.	"	"
Boileau, J. B. Sr.	223 - 3rd St. E. Fort Frances, Ont.	2400 00	3500.	"	"
Boonuk, Mike	Fort Frances, Ont.	1756 39	1900.	"	"
Saxton, A. E.	Fort Frances, Ont.	1800 00	3900.	"	"
Terms		$ 25691 61	$ 38,600	$ None	$ None

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Exhibit G
Sheet No. 3

CONTINUATION SHEET FOR FORM 1066 L.A.-7

Name of Individual, Partnership, or Corporation to whom Paid	Address in Full	Amount of Income Paid		Expenditure and Credits	Amount Taxable		Amount of Tax Withheld	
Markoski, Nick	Fort Frances, Ont.	$1833	69	$ 2300.	$ None		$ None	
Gustafson, C.	1005 - 2nd St. Ft. Frances, Ont.	2225	94	3500.	"		"	
	Total -	4059	63	5800.	"		"	

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EX. - H

Form 1013
U. S. INTERNAL REVENUE

Collector will stamp here the date of filing if the return is not accompanied by remittance.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON INTEREST DERIVED FROM BONDS AND SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS

For Calendar Year 1927

6% Gold Notes

Do not write in this space

PAYMENT

$ .....

(Cashier's Stamp)

Minnesota and Ontario Paper Company
(Name of debtor organization)

1100 Builders Exchange Bldg., Minneapolis, Minn.
(Address in full)

This return must be made to the Collector of Internal Revenue for the district in which the withholding agent is located, on or before March 15, 1928, and the tax must be paid on or before June 15, 1928.

.....
(Name of withholding agent)

.....
(Address in full)

CASH CHECK M. O.
Enclosed

By .....

INSTRUCTIONS

If a debtor organization makes its own return, no entries should be made on the lines provided for name and address of withholding agent. This return must be made by the debtor organization, or its duly authorized withholding agent, and must show, by months in which the income was paid and reported on Form 1012, the total amount of tax to be paid at the source on each of the following classes of payments:

1. Interest on bonds containing a tax-free covenant clause:
   (a) If paid to a citizen or resident of the United States (individual or fiduciary) not claiming exemption, a domestic or resident partnership, a nonresident alien (individual or fiduciary), a foreign partnership or a foreign corporation having no office or place of business in the United States, or if the owner of the bonds is unknown, a tax of 2 per cent shall be withheld and paid at the source; except
   (b) If paid to a citizen or resident who files with the interest coupons on or before February 1, 1928, a certificate on Form 1000A that his net income in excess of the personal exemption and other credits does not exceed $4,000, a tax of 1½ per cent shall be withheld and paid at the source.
2. Interest on bonds not containing a tax-free covenant clause:
   (a) If paid to a nonresident alien (individual or fiduciary), a foreign partnership having no office or place of business in the United States, or if the owner of the bonds is unknown, a tax of 5 per cent shall be withheld and paid at the source.
   (b) If paid to a foreign corporation having no office or place of business in the United States, a tax of 13½ per cent shall be withheld and paid at the source.

MONTH	CLASS 1(a)	CLASS 1(b)	CLASS 2(a)	CLASS 2(b)	TOTAL
JANUARY	$ 60	$	$	$	$ 60
FEBRUARY					
MARCH	400 80	11 25			412 05
Supp.	1 20	25			1 45
APRIL	23 40	2 25			25 65
MAY	4 80	-			4 80
Supp.	1 80				1 80
JUNE					
JULY					
AUGUST	60				60
SEPTEMBER	319 00	22 85			341 85
OCTOBER	1 40	6 30			23 70
NOVEMBER	9 60	45			10 05
DECEMBER					
TOTALS	$ 778 20	$ 44 55	$ -	$ -	$ 822 75
Less adjustments on account of Forms 1001B, attached hereto				$ -	
Less adjustments on account of Forms 1001C, attached hereto				-	
Total adjustments					
Amount of tax to be assessed					$ 822 75

I swear (or affirm) that the above return is a full and complete summary of the amounts of tax (heretofore reported on the monthly returns on Form 1012, which are hereby made a part of this return) required to be withheld from payments made by the above organization during the calendar year 1927.

Sworn to and subscribed before me this 16th day of March, 1928.

E. M. MERRICK
(Signature)
Notary Public, Hennepin County, Minn.
My commission expires Dec. 28th, 1929

342

A. A. Stigen
(Signature)
Assistant Auditor
(Capacity in which acting)
1100 Builders Exchange Bldg.
(Address)
Minneapolis, Minnesota.

EXHIBIT H. 303

Ex-I

Form 1012
Internal Revenue
Collector will stamp here the date of filing if this return is not accompanied by remittance.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON INTEREST DERIVED FROM BONDS AND SIMILAR OBLIGATIONS OF DOMESTIC AND RESIDENT CORPORATIONS 6% First Mortgage Bonds

For Calendar Year 1927

Minnesota and Ontario Paper Company
(Name of debtor organization)

1100 Builders Exchange Bldg., Minneapolis, Minn.
(Address in full)

This return must be made to the Collector of Internal Revenue for the district in which the withholding agent is located, on or before March 15, 1928, and the tax must be paid on or before June 15, 1928.

(Name of withholding agent)

(Address in full)

Do not write in this space
PAYMENT
$
(Cashier's Stamp)

CASH CHECK M. O.
Received
By

INSTRUCTIONS

If a debtor organization makes its own return, no entries should be made on the lines provided for name and address of withholding agent. This return must be made by the debtor organization, or its duly authorized withholding agent, and must show, by months in which the income was paid and reported on Form 1012, the total amount of tax to be paid at the source on each of the following classes of payments:

1. Interest on bonds containing a tax-free covenant clause:
   (a) If paid to a citizen or resident of the United States (individual or fiduciary) not claiming exemption, a domestic or resident partnership, a nonresident alien (individual or fiduciary), a foreign partnership or a foreign corporation having no office or place of business in the United States, or if the owner of the bonds is unknown, a tax of 2 per cent shall be withheld and paid at the source; except
   (b) If paid to a citizen or resident who files with the interest coupons on or before February 1, 1928, a certificate on Form 1040A that his net income in excess of the personal exemption and other credits does not exceed $4,000, a tax of 1½ per cent shall be withheld and paid at the source.
2. Interest on bonds not containing a tax-free covenant clause:
   (a) If paid to a nonresident alien (individual or fiduciary), a foreign partnership having no office or place of business in the United States, or if the owner of the bonds is unknown, a tax of 5 per cent shall be withheld and paid at the source.
   (b) If paid to a foreign corporation having no office or place of business in the United States, a tax of 13½ per cent shall be withheld and paid at the source.

See Schedule Attached.

MONTH	CLASS 1(a)	CLASS 1(b)	CLASS 2(a)	CLASS 2(b)	TOTAL
JANUARY	$ 1 090 28	$ -	$ -	$ -	$ 1 090 28
FEBRUARY	88 08	-	-	-	88 08
MARCH	32 97	-	-	-	32 97
APRIL	3 675 86	23	-	-	3 676 09
MAY	300 81	-	-	-	300 81
JUNE	62 14	-	-	-	62 14
JULY	664 [illegible]	345 92	-	-	1 010 15
AUGUST	58 [illegible]	6 23	-	-	65 18
SEPTEMBER	170 [illegible]	3 [illegible]	-	-	174 22
OCTOBER	3 407 [illegible]	428 17	-	-	3 835 49
NOVEMBER	1 115 77	96 [illegible]	-	-	1 211 18
DECEMBER	145 [illegible]	23 [illegible]	-	-	169 38
TOTALS	$ 10 807 [illegible]	905 [illegible]	$ -	$ -	$ 11 712 92

Less adjustments on account of Forms 1001B, attached hereto $ -

Less adjustments on account of Forms 1001C, attached hereto -

Total adjustments

Amount of tax to be assessed $ 11 712 92

I swear (or affirm) that the above return is a full and complete summary of the amounts of tax (heretofore reported on the monthly returns on Form 1012, which are hereby made a part of this return) required to be withheld from payments made by the above organization during the calendar year 1927.

Sworn to and subscribed before me this 14th day of March, 1928.

Notary Public, Hennepin County, Minn.
My commission expires Dec. [illegible]

(Title)

A. A. Fitzgerald
(Signature)

Assistant Auditor,
(Capacity in which acting)

343 1100 Builders Exchange Bldg.
(Address in full)

EXHIBIT 1. 307

MINNESOTA & ONTARIO PAPER COMPANY.

Ex-I

Schedule Supporting Form 1013
Taxes Withheld on First Mortgage Bonds
Year 1927

		Class 1(a)	Class 1(b)	
January	- Original Return	$ 1,073.65	$	$ 1,073.65
"	- Supplementary "	16.63		16.63
		1,090.28		1,090.28
February	- Original Return	70.40		70.40
"	- Supplementary "	17.63		17.63
		88.03		88.03
March	- Original Return	32.31		32.31
"	- Supplementary "	.66		.66
		32.97		32.97
April	- Original Return	3,572.85		3,572.85
"	- Per Bureau Letter Dated 11-1/27	.37		.37
"	& Supplementary Return	99.04		99.04
"	- " "	1.80	.23	2.03
"	- " "	1.80	-	1.80
		3,675.86	.23	3,676.09
May	- Original Return	223.16		223.16
"	- Supplementary "	77.65		77.65
		300.81		300.81
June	- Return	62.14		62.14
		62.14		62.14
July	- Original Return	644.61	344.08	988.69
"	- Supplementary "	19.62	1.80	21.42
"	- " "	-	.04	.04
		664.23	345.92	1,010.15
August	- Original Return	41.58	7.56	49.14
"	- Supplementary "	14.05	-	14.05
"	- " "	1.32	.67	1.99
		56.95	8.23	65.18
September	- Original Return	170.16	3.06	173.22
		170.16	3.06	173.22
October	- Original Return	3,388.92	427.72	3,816.64
"	- Supplementary "	18.40	.45	18.85
		3,407.32	428.17	3,835.49
November	- Original Return	1,048.80	90.45	1,139.65
"	- Supplementary "	69.57	5.96	75.53
		1,114.77	96.41	1,211.18
December	- Original Return	37.60	7.88	45.48
"	- Supplementary "	106.29	15.61	121.90
		143.89	23.49	167.38
Grand Totals for Year 1927		$ 10,807.41	$ 905.51	$ 11,712.92

DELINQUENT

Exhibit J.

Form 1042
U. S. Internal Revenue

Attach all stamps here. Do not write in this space. Cancel by writing or stamping name of withholding agent and date of payment.

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

For Calendar Year 1927

This return must be made by the withholding agent in whose name the bonds, coupons, or other evidences of indebtedness owned by nonresident alien individuals, foreign partnerships, or foreign corporations not engaged in trade or business within the United States and not having any office or place of business therein, are issued, and who will be required to pay the tax withheld on interest coupons detached therefrom.

Minnesota and Ontario Paper Company,
(Name of withholding agent)

1100 Builders Exchange Building, Minneapolis, Minnesota.
(Address in full)

Do not write in this space
PAYMENT
$.....
(Cashier's Stamp)

CASH CHECK M. O.
Received
By.....

INSTRUCTIONS

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds), rents, salaries, wages, or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 216 (a) of the Revenue Act of 1926) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payors of such income are required to withhold and deduct a tax therefrom at the rate of 5 per cent when paid to nonresident alien individuals or foreign partnerships, and 13½ per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,000, and, in addition, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1115 with his employer not later than February 1 of the succeeding year. By filing Form 1115 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable to compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1927.

Rate	Amount Paid	Tax Withheld
14%	$.....	$.....
5%	$.....	$.....
8%	$.....	$.....
13½%	$1496734.94	$202389.22
Total	$1496734.94	$202389.22

This return is prepared under Section 3176, Revised Statutes, from the best information available.

Guy O. Helvering
Commissioner
(Capacity in which acting)

Number of Claims for Credit, Form 1115, attached to this return None

Sworn to and subscribed before me this ..... day of ....., 1928.

(Signature) (Title)

Name of Individual, Partnership, or Corporation to Whom Paid	Address in Full	Amount of Income Paid	Exemptions and Credits (Allowed Form 1115)	Amount Taxable	Amount of Tax Withheld
Fort Francis Pulp and Paper Company, Limited,	Fort Francis, Ontario, Canada.	$1496734.94	None	1496734.94	202389.22
			282	B+D	
				202,389.22	
				50,562.31	
				61,530.25	
				144441.78	
				M.M.D.	
				27 7/8/33 Ref	
				JUL 10 1933	Appeal No. 1
Totals		1496734.94	None	1496734.94	202389.22

Return Prepared By the Commissioner Under the Provisions of Section 1706 R. S.
Basis: B. & M. (Short Cert.) 4/6/33
Div. AR Sec. D Auditor
Approved: L. K. Sunderland Date: 7/5/33

345

B-1

EXHIBIT J.-211

Corrected

DELINQUENT

Exhibit K

Form 1042
U. S. Internal Revenue

ANNUAL RETURN OF INCOME TAX TO BE PAID AT SOURCE

ON SALARIES, WAGES, RENT, ETC., PAID TO NONRESIDENT ALIEN INDIVIDUALS, FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS NOT ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES AND HAVING NO OFFICE OR PLACE OF BUSINESS THEREIN

For Calendar Year 1926.

Do not write in this space
PAYMENT
$
(Cashier's Stamp)

This return must be made by the Collector of Internal Revenue for the district in which withholding agent is located, or, if withholding agent is located in a foreign country, by the collector at the port where the return must be made, as shown by Form 1042.

Minnesota and Ontario Paper Company,
(Name of withholding agent)

1100 Builders Exchange Building, Minneapolis, Minnesota.
(Address in full)

CASH CHECK M. O.
Examined
By

INSTRUCTIONS

This return is required to be made by all individuals, corporations, and partnerships, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of interest (except interest on corporate bonds), rents, salaries, wages, or other fixed or determinable annual or periodical income (other than dividends of the class allowed as a credit by Section 216 (a) of the Revenue Act of 1926) of nonresident alien individuals, foreign partnerships and foreign corporations not engaged in trade or business in the United States and not having any office or place of business therein. The payors of such income are required to withhold and deduct a tax therefrom at the rate of 8 per cent when paid to nonresident alien individuals or foreign partnerships, and 13½ per cent when paid to foreign corporations.

A nonresident alien individual is entitled to the personal exemption of $1,500, and, in addition, if such alien is a resident of Canada or Mexico he may claim a credit of $400 for each dependent. Such exemption and credit for dependents can be claimed on this return in connection with salaries or wages, provided the alien files Form 1115 with his employer not later than February 1 of the succeeding year. By filing Form 1115 an alien who is a resident of Canada or Mexico is also entitled to have tax withheld from income attributable to compensation for personal services actually performed in the United States in excess of the personal exemption and credit for dependents at the rate of 1½ per cent on the first $4,000, 3 per cent on the second $4,000, and 5 per cent on the amount in excess of $8,000.

I swear (or affirm) that the following is a true and complete return of all payments of salaries, wages, interest, rents, etc., made by the above-named withholding agent to nonresident alien individuals, foreign partnerships, and foreign corporations, and of the tax withheld from such payments, during the calendar year 1926.

Rate	Amount Paid	Tax Withheld
1½%	$	$
3%	$	$
5%	$	$
13½%	$609,785.81	$88,318.38
Totals	$609,785.81	$88,318.38

This return is prepared under Section 3176, Revised Statutes, from the best information available.

Guy D. Goff Comptroller per
(Signature)

(Capacity in which acting)

Number of Claims for Credit, Form 1115, attached to this return None

Sworn to and subscribed before me this _____ day of _____, 1926.

(Signature) (Title)

Name of Individual, Partnership, or Corporation to Whom Paid	Address in Full	Amount of Income Paid	Exemptions and Credits (Articles 561, 562)	Amount Taxable	Amount of Tax Withheld
Fort Francis Pulp & Paper Company, Limited	Fort Francis, Ontario Canada.	$609,785.81	None	$609,785.81	$88,318.38

AUDIT REVIEW DIVISION
289 Bad
NOV 10 1926
ASSESSMENT
1 $ 88,318.38
2 $ 20,570.60
3 $ 29,929.90
Total $ 138,870.88

ASSESSMENT MADE
210 10/6/27
$ 16.85

Return Prepared By the Commissioner Under the Provisions of Section 3176 R. S.
Basis: G. & M. (Income Cons) 4/2/23
Div.: A.R. Sec.: A-7 Auditor:
Approved: Date: 11/7/33

Totals $609,785.81 None $609,785.81 $88,318.38

0 5 Appl #1

EXHIBIT K.313

A-1

347 Mr. Garvey: The plaintiffs now having formally rested in Law Case Number 3391, the defendant renews its motion to dismiss as heretofore filed, and the defendant, now resting in that case, does hereby renew its motion for judgment as heretofore filed.

The Court: The motions will be taken under advisement, and the respective parties will be allowed exceptions to the adverse rulings.

Mr. Larson: So that there will be no question about the state of the record, the plaintiffs, in Case Number 3391, now rest, and renew the motions as already stated in the record.

The Court granted the Government sixty days in which to file a brief, and the trustees thirty days thereafter within which to file their brief, and the Government was permitted to file requests for findings of fact and conclusions of law at the same time that it filed its brief.

Thereafter, at the same time as filing the brief, the defendant filed its requests for findings and conclusions which, omitting caption, was in words and figures as follows:

Now comes the United States, defendant in the above-entitled action, by George F. Sullivan, United States Attorney, and John E. Garvey, Special Assistant to the Attorney General, with the request to the Court to adopt as its Findings of Fact and Conclusions of Law the Findings and Conclusions, whereof a copy is attached hereto. The original, or ribbon copy, of said proposed Findings and Conclusions is also submitted herewith for the convenience of the Court.

With its request for findings and conclusions, the defendant made and filed proposed findings of fact and conclusions of law, which, omitting caption, was in words and figures as follows:

348 Defendant's Requested Findings of Fact and Conclusions of Law.

In the District Court of the United States in and for the District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer as Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiffs,
No. 3391. vs. At Law.
United States of America, Defendant.

The above-entitled action came on for trial on the 4th day of May, 1936, at Minneapolis, Minnesota before the Court,

sitting without a jury; upon the case being called for trial, the United States, in conformity with the allegations of its answer, made and filed a motion to dismiss certain causes of action purported to be stated in the plaintiffs' petition; this Court heretofore by appropriate order, and for lack of jurisdiction thereof, dismissed all causes of action purported to be stated in the plaintiffs' petition, except that for the recovery of $7,758.58 of tax, and $518.34 of interest thereon paid by the Minnesota and Ontario Paper Company to the Collector on the 23rd day of April, 1930, under the first deficiency income tax assessment made for the year 1928.

The Court having read and considered the pleadings on file herein, and having read and considered the stipulations and other evidence filed in the case, and having read and considered the briefs which have been supplied, the Court now makes findings of fact and conclusions of law as follows:

349 Findings of Fact.

I.

Minnesota and Ontario Paper Company is a corporation organized and existing under the laws of the State of Maine. It is hereinafter referred to as the Paper Company.

II.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer now are and at all times since September 29, 1934, have been, pursuant to an order of this Court that day made and entered under Section 77B of the Bankruptcy Act, the duly appointed, qualified, and acting trustees of the estate of the Paper Company, debtor. Between July 11, 1934, and said September 29, 1934, C. T. Jaffray and R. H. M. Robinson, pursuant to an order of this Court made and entered under said Act on July 11, 1934, were the duly appointed, qualified, and acting temporary trustees of the estate of the Paper Company, debtor. From November 30, 1931, until their appointment as such temporary trustees on July 11, 1934, Jaffray and Robinson were the duly appointed, qualified, and acting receivers of the Paper Company.

III.

From 1917 to 1920, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with the following corporations: International Lumber Company, Rainy River Improvement Company, Min-

nesota, Dakota and Western Railway Company, Falls Lumber and Coal Company, Watrous Island Boom Company, and International Insulation Company. From 1921 to 1925, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with all said named corporations except International Insulation Company. From 1926 to 1928, inclusive, the Paper Company owned shares of the capital stock of and for income-tax purposes was affiliated with all said named corporations together with Minnesota Forest Products Company, a corporation. The corporations affiliated with the Paper Company are sometimes herein referred to as "affiliates".

350 During each of said three periods the annual earnings or net income of the Paper Company and its affiliates were consolidated for income-tax purposes. All taxes paid on such consolidated earnings or net income have been paid by the Paper Company.

IV.

The income taxes paid by the Paper Company to the United States for the year 1928, of which recovery is sought in this action, were paid to one Levi M. Willcuts as the duly appointed, qualified, and acting Collector of Internal Revenue for the District of Minnesota. Willcuts was such Collector from June 1, 1921, to July 31, 1933, inclusive. Since the latter date he has not been and is not now in office as Collector of Internal Revenue.

V.

a. In February, 1921, and March, 1924, the Commissioner assessed an aggregate amount of $759,838.91 as additional taxes upon the 1917 consolidated income of the Paper Company and its affiliates. In March, 1924, the Commissioner assessed $884,665.66 as additional taxes upon the 1918 consolidated income of the Paper Company and its affiliates. Claims for abatement of $498,111.21 of the 1917 assessment were rejected on February 4, 1925. A claim for abatement of the 1918 assessment was rejected January 23, 1925. On January 23, 1925, the Commissioner notified the Paper Company and its affiliates of his determination of deficiencies of $613,248.82 and $1,403,435.47 in taxes upon the consolidated income of the Paper Company and its affiliates for 1919 and 1920 respectively. On February 21, 1925, the Paper Company and its affiliates filed petitions with the Board for redetermination of the said additional taxes assessed for 1917 and 1918. On March 19, 1925, the Paper Company and its affiliates filed petitions with the Board

for redetermination of the deficiencies determined for 1919 and 1920.

351 b. While said proceedings were pending before the Board, the Paper Company and its affiliates held conferences with the Commissioner and other representatives of the Treasury Department for the purpose of ascertaining and agreeing upon the amount of tax owed for each of said years 1917 to 1920, inclusive. As the result of said conferences the Paper Company and the Commissioner entered into a written stipulation dated February 25, 1926. Said stipulation was filed with the Board February 26, 1926.

c. By letter dated February 25, 1926, the Commissioner advised the Paper Company as follows:

Confirming the agreement made with the Commissioner of Internal Revenue on February 24, 1926, you are advised that the amount of the penalty to be assessed against you as the result of the negligent understatement of your tax liability for the taxable years 1917, 1918, 1919, and 1920 will be compromised by accepting a sum equal to 6 per cent per annum on the amount of the deficiences determined and assessed in accordance with the stipulation this date entered into between the taxpayer and the representative of this office, from the date the deficiencies became due and payable to the date of payment.

d. On February 26, 1926, the following further written stipulation was signed and filed with the Board:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by its attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer", by its counsel, that the taxpayer's deficiency in tax for the taxable years 1917, 1918, 1919, and 1920 shall be determined by the Board of Tax Appeals in accordance with the agreement entered into between the taxpayer and the Commissioner on February 25, 1926, a copy of which is hereto attached, marked "Exhibit A", and made a part of this stipulation.

e. On February 26, 1926, the Board entered the following order in respect of said proceedings then pending before it:

352 This appeal coming on to be heard on February 26, 1926, the taxpayer being represented by Ralph M. Shaw, Esq., and the Commissioner being represented by E. C. Lake, Esq., and it appearing that the parties have entered into a

certain stipulation which was filed on this date, and it appearing that the parties have agreed to compute the tax in accordance with the stipulation aforesaid; Now, therefore, on agreement of counsel for both parties, it is

Ordered, That the tax shall be computed in accordance with the stipulation filed this date and referred to hereinabove. Final determination of the deficiency will be made under rule 50 of the Board's Rules of Practice on consent of the parties or on 10 days' notice by either party to the adverse party.

f. On March 6, 1926, the following further stipulation was filed with the Board in said proceedings:

It is hereby stipulated and agreed by and between the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and by the Minnesota & Ontario Paper Co. and its said affiliated corporations, hereinafter referred to as the "taxpayer", by its counsel, that the amount of the deficiency due from the taxpayer or overassessment in the above-entitled appeals for each of the taxable years 1917, 1918, 1919 and 1920 is as follows:

	Tax	Penalty
1917, overassessment	$270,305.51	$227,633.03
1918, overassessment	532,722.18	139,897.55
1919, deficiency	491,360.53	165,834.19
1920, deficiency	920,772.85	255,514.47

The above overassessments for the years 1917 and 1918 arose by reason of the Commissioner's assessing against the Paper Company additional taxes of $759,838.91 for the year 1917 and $884,665.66 for the year 1918. The additional taxes agreed upon as due by the Paper Company for the years 1917 and 1918 were in the respective amounts of $489,533.40 and $351,943.48, which amounts were respectively $270,305.51 and $532,722.18 less than the respective amounts theretofore assessed for said years as set forth in subparagraph (a) above. There was no assessment of the amounts designated "Penalty" prior to March 8, 1926.

353 g. Pursuant to the stipulations filed as noted above, the Board on March 6, 1926, entered three orders determining the amount owing for each year involved. The amount owing for 1917 was covered in one order; the amount owing for 1918 was covered in another order; and the amount owing for each of the years 1919 and 1920 was covered in the third order. The pertinent provisions of said orders are respectively as follows:

Ordered that the amount of tax deficiency and penalty due from the taxpayer be and the same is hereby redetermined for the year 1917 to be $489,533.40 tax, and $227,633.03 penalty, and that of the tax heretofore assessed there shall be abated the sum of $270,305.51 and the amount of the penalty of $227,633.03 shall be assessed and paid.

Ordered that the amount of tax deficiency and penalty due from the taxpayer be and the same is hereby redetermined for the year 1918 to be $351,943.48 tax deficiency, and $139,897.55 penalty, and that of the tax heretofore assessed there shall be abated the sum of $532,722.18 and the amount of the penalty of $139,897.55 shall be assessed and paid.

Ordered that the amount of tax deficiency due from the taxpayer in and for the said years be and the same is hereby redetermined for the year 1919 to be $491,360.53 and for the year 1920 to be $920,772.85 and in addition thereto penalty in the amounts respectively of $165,834.17 and $255,514.46, which said tax deficiencies and penalties shall be assessed and paid.

h. Thereafter on March 8, 1926, the Commissioner, in accordance with the Board's orders, referred to above, assessed on his March, 1926, assessment list the amounts of the deficiencies for 1919 and 1920 and the amounts designated as "penalties" for 1917, 1918, 1919, and 1920, and issued certificates of overassessment of the amounts to be abated for the years 1917 and 1918. On March 12, 1926, the Collector issued notices and made demand for each of the years as follows:

Year	Tax	Amounts Called "Penalty" in Board's Orders	Interest	Total
1917	$ 489,533.40	$227,633.03		$ 717,166.43
1918	351,943.48	139,897.55		491,841.03
1919	491,360.53	165,834.17	807.71	658,022.41
1920	920,772.85	255,514.46	1,513.59	1,177,800.90
Total	$2,253,610.26	$788,879.21	$2,321.30	$3,044,810.77

354 The total of the amounts designated as "Penalty" and of the interest is $791,200.51.

On March 22, 1926, the Paper Company paid to the Collector $3,044,810.77, the sum of the foregoing demands.

i. On April 18, 1928, a suit was instituted in the Court of Claims against the United States for the recovery of income, war-profits, and excess-profits taxes for the years

1917 to 1920, inclusive. The decision of the Court of Claims is reported in 59 Fed. (2d) 242. Reference to said decision is hereby made.

VI.

a. On May 11, 1929, the Paper Company filed with the Collector its consolidated income tax return for the year 1928 reporting a consolidated net loss and no tax liability. The Commissioner, upon an audit of said return, determined a deficiency in tax for the said year 1928 in the sum of $7,758.58 tax and $518.34 interest thereon, and on April 26, 1930, said amount was by the Commissioner assessed against the Paper Company, and the same was paid to the Collector as set out in subparagraph (b) hereof. On the October 31, 1931 Assessment List for the District of Minnesota, the Commissioner, pursuant to Section 274 (a) of the Revenue Act of 1928, assessed an additional tax for 1928 against the Paper Company in the amount of $42,166.52 and interest thereon of $6,646.71, which amounts, together with the previous assessment, made April 26, 1930, of $7,758.58 in taxes and $518.34 in interest thereon (which last amounts had been paid to the Collector prior to October 31, 1931, as hereinafter set out in subparagraph (b) hereof), made a total of $57,090.15. The Commissioner made a further audit of such return for the year 1928 and as a result thereof issued a certificate of overassessment bearing the number 2223612. By said certificate $34,543.10 of the total amount assessed as aforesaid on October 31, 1931, was abated, leaving a balance on account of taxes and interest assessed for the year 1928 but outstanding and unpaid as follows: income taxes,
$12,774.52; interest thereon to October 31, 1931,
355 $1,495.61; total, $14,270.13.

b. On April 29, 1930, pursuant to a demand of the Collector, the Paper Company paid to him $7,758.58, together with interest thereon of $518.34, the additional tax and interest for the year 1928, assessed by the Commissioner on the April 26, 1930 Assessment List for the District of Minnesota. On February 9, 1932, the receivers filed a claim for refund of such additional tax and interest so paid. The grounds stated in the said claim for refund are as follows:

Reference is herewith made to a "Statement of Objections" dated January 27, 1932, filed by C. T. Jaffray and R. H. M. Robinson, Receivers for Minnesota and Ontario Paper Company, against the additional assessment of corporation income taxes for years, 1926, 1927 and 1928, and on basis of said statement, the taxpayer is entitled to a re-

fund for the year 1928 amounting to $7,758.58 plus interest thereon as provided by law.

All of the facts recited in said statement are incorporated herein by reference with the same force and effect as if fully rewritten herein.

The "Statement of Objections" dated January 27, 1932, to which said claim for refund makes reference, alleged as error the disallowance by the Commissioner of the deduction for 1926 of $790,355.20 of the amount of $791,200.51 referred to in Section V (h) above. Said claim for refund was rejected by the Commissioner and the receivers of the Paper Company notified thereof by letter dated July 13, 1933.

VII.

In making his final determination of income tax liability for the said year 1926, the Commissioner did not allow as a deduction the item of $788,879.21 designated in the Board's orders as penalties, and did not allow as a deduction $1,475.99 of the amount paid by the Paper Company as interest, all as set out in paragraph V (h) hereof. In arriving at the total tax liability of $33,565.47 for the year 1926, the Commissioner determined a consolidated net income of $248,633.10. In arriving at the total tax liability of $38,965.14 for the year 1927, the Commissioner determined a consolidated net income of $288,630.69. In arriving at the total tax liability of $20,533.10 for the year 1928, the
356 Commissioner determined a consolidated net income of $187,094.55. The foregoing consolidated net incomes for the years 1926, 1927, and 1928 were arrived at as to each company of the affiliated group as follows:

	Year 1926	
Net Income:		
Minnesota and Ontario Paper Co.		$462,609.08
Falls Lumber and Coal Company		41,400.37
		$504,009.45
Less Net Losses:		
International Lumber Company	$163,108.72	
Minnesota, Dakota & Western Ry. Co.	16,874.38	
Rainy River Improvement Company	19,860.81	
Minnesota Forest Products Company	55,532.44	255,376.35
Consolidated Net Income for 1926		$248,633.10

Year 1927

Net Income:		
Minnesota and Ontario Paper Co.		$678,568.62
Falls Lumber Company		32,490.43
		$711,059.05
Less Net Losses:		
International Lumber Company	$312,502.11	
Minnesota, Dakota & Western Ry. Co.	36,222.37	
Rainy River Improvement Co.	20,519.49	
Minnesota Forest Products Co.	53,184.39	422,428.36
Consolidated Net Income for 1927		$288,630.69

Year 1928

Net Income:		
Minnesota and Ontario Paper Co.		$314,796.00
Minnesota, Dakota & Western Ry. Co.		46,828.43
Falls Lumber and Coal Company		21,967.71
		$383,592.14
Less Net Losses:		
International Lumber Company	$130,016.31	
Rainy River Improvement Co.	14,719.76	
Minnesota Forest Products Co.	53,761.52	198,497.59
Consolidated Net Income for 1928		$187,094.55

VIII.

On June 12, 1933, pursuant to authorization duly given, the Paper Company and its affiliates executed, and on July 7, 1933, the Commissioner executed, with the approval of the Secretary of the Treasury on the same day given, an agreement entered into under and in pursuance of Section 606 of the Revenue Act of 1928. The pertinent provisions of said closing agreement are as follows:

357 Whereas, there has been a determination of the tax liability of said taxpayers in respect of income tax imposed by the Revenue Acts of 1921, 1924, 1926, and 1928, for each taxable period stated above falling under the provisions of those Acts in the sum of

$ 17,500.00 for the calendar year 1922,
136,925.19 for the calendar year 1923,
47,022.71 for the calendar year 1924,
1,565.77 for the calendar year 1925,
33,565.47 for the calendar year 1926,
38,965.14 for the calendar year 1927, and
20,533.10 for the calendar year 1928,

exclusive of any penalty or interest applicable thereto as provided by law:

Now, this agreement witnesseth, that said taxpayers and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if this agreement is approved by the Secretary of the Treasury, or the Under Secretary, within one year from the date this agreement is signed by said taxpayers.

Reserving, however, to the taxpayers the right to contest the disallowance of the deduction claimed for the year 1926 in the amount of $790,455.20, which amount was paid, on March 22, 1926, to the United States Government in connection with the payment of additional Federal income, war-profits and excess-profits taxes for the calendar years 1917 to 1920, inclusive, and which amount the taxpayers contend was deductible as interest on deficiencies in taxes, and/or was deductible as a penalty, which contentions the Government denies, and reserving to the taxpayers the right to any benefit from the reduction in Federal income taxes, for the years 1926, 1927 and 1928, that will result in the event of a final conclusion of the issues favorable to the taxpayers.

358 Conclusions of Law.

I.

That the agreement, made under the provisions of Section 606 of the Revenue Act of 1928, established $20,533.10 of tax as the Paper Company's income tax liability for the year 1928; that the tax liability so established is conclusive, except in so far as same may be reduced as the result of allowing the deduction claimed for the year 1926; that if the deduction so claimed for the year 1926 is allowed in full, nevertheless, at the time the Collector collected the $7,758.58 of tax and $518.34 of interest thereon as set forth in paragraph VI (b) hereof, the Paper Company actually owed in excess of that amount as taxes for the said year 1928.

II.

That the plaintiffs have wholly failed to prove what the correct tax liability of the Paper Company would have been for the year 1928 in the event of the allowance of the deduction claimed for the year 1926.

III.

That the plaintiffs have wholly failed to prove that the collection made by the Collector on the 23rd day of April, 1930, of $7,758.58 of tax and $518.34 of interest thereon was

in excess of the Paper Company's tax liability for the year 1928, but, on the other hand, the proof shows that the amount so collected by the Collector was a lesser amount than that actually owing by the Paper Company on said date.

IV.

That the plaintiffs have wholly failed to prove that the allowance of the claimed deduction for the year 1926 would have reduced the tax liability for the year 1928 as such tax liability was determined in the 606 closing agreement hereinbefore referred to.

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V.

That the deduction claimed by the taxpayer and disallowed by the Commissioner for the year 1926, and which is the sole basis of recovery in this suit, was the sum assessed against and collected from the taxpayer as a penalty imposed on the Minnesota and Ontario Paper Company on account of understatement of its income for the years 1917 to 1920, inclusive; that this sum of money, being a penalty payment, was not allowable as a deduction from income under the applicable provisions of the revenue laws, and the Commissioner of Internal Revenue properly disallowed the said sum as a deduction from the income of the Minnesota and Ontario Paper Company for the year 1926; the deduction so claimed for the year 1926 having been properly disallowed, the income tax liability, for the year 1928, as agreed to in the 606 closing agreement referred to above, is final and conclusive.

VI.

On account of failure of proof, this action should be dismissed as against the plaintiffs, and the United States should have judgment for its costs and disbursements herein.

Let judgment in accordance with the foregoing findings of fact and conclusions of law be submitted within .... days of the entry of these findings and conclusions.

....,
United States District Judge.

July, ..., 1936.

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360 The Court refused to grant the motion to dismiss filed by defendant, to which action of the court defendant was duly allowed an exception.

The Court refused to sustain the motion for judgment filed by defendant, to which action of the Court defendant was duly allowed an exception.

The Court refused to grant defendant's proposed findings of fact and conclusions of law, to which action of the Court defendant was duly allowed an exception.

Thereafter plaintiffs also made a motion for special findings of fact and conclusions of law. Among the conclusions of law requested by the plaintiffs were the two following conclusions:

VIII.

The amount of $791,200.51, and the whole thereof, paid to the Collector on March 22, 1926, as part of the total payment of $3,044,810.77 that day made to the Collector was and is interest and was not and is not penalty. The Paper Company was and is entitled under Section 234 (a) (2) of the Revenue Act of 1926 to have the same deducted from gross income for the purpose of determining taxable net income for the year 1926. Disallowance by the Commissioner of the deduction of $790,355.20 of said amount of $791,200.51 was and is without authority and contrary to law.

XVI.

The report on Form 1042 for the year 1921, filed with the Collector not later than March 15, 1922, was and is in substantial compliance with the requirements of the law relating to income-tax and withholding-tax returns, was made in good faith and not fraudulently, was and is a good and sufficient return, and operated to begin the running of the statute of limitations against the assessment or collection of withholding taxes for said year 1921. The assessment of additional withholding taxes for the year 1921 made on July 10, 1933, was not made within the period prescribed therefor by law, and was and is barred by the statute of limitations.

The Court refused to grant plaintiffs' requested conclusions of law set out above, to which action of the Court plaintiffs were duly allowed an exception.

By order dated and filed February 25, 1937, the Court overruled and denied each and all objections, hereinbefore set out, made and entered by the plaintiffs to the reception in evidence of certain portions of the written stipulation of facts herein. Exceptions to said rulings were duly allowed.

On the 9th day of April, 1937, the Court entered judgment in favor of the plaintiffs and against the defendant, to which action of the Court defendant was duly allowed an exception.

The term and time within which to file bill of exceptions was extended to the 9th day of November, 1937, by Rule 25 of the Court extending the term and the time within which to file bill of exceptions.

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361 (Stipulation of Counsel Approving Bill of Exceptions.)

It is hereby stipulated by and between the parties hereto that the above and foregoing, which is tendered by the parties in this case as the Bill of Exceptions in the case, contains a true and correct statement of the evidence and of all the evidence introduced in said case, and of all of the proceedings in the trial and disposition of said case, and the exceptions had and taken in said proceedings.

It is further agreed that this Bill of Exceptions may be approved, allowed, and settled as the Bill of Exceptions of this cause.

Dated this 10th day of September, 1937.

VICTOR E. ANDERSON,
LINUS J. HAMMOND,
J. E. GARVEY,
Attorneys for the Defendant.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for the Plaintiffs.

(Approval of Bill of Exceptions by District Judge.)

On this 10th day of September, 1937, and within the time allowed by (order or rule of court as the case may be), the defendant in this cause tendered the foregoing Bill of Exceptions herein, with stipulation of counsel attached, agreeing that the same might be approved, allowed, and settled as the Bill of Exceptions in this cause.

It appears to the Court that in said Bill is contained a full and correct statement of the evidence and of all of the evidence introduced in said cause, and of all of the proceedings had and taken in the trial and disposition thereof.

Now, Therefore, the Court having duly considered and examined said Bill of Exceptions, it being found that the Excep-

tions therein are truly alleged, the same is by the Court hereby allowed and settled and approved.

362 Given under my hand the day here last above written.

GUNNAR H. NORDBYE,
District Judge.

(Endorsed): Filed September 10, 1937. Margaret L. Mullane, Clerk, By Chell M. Smith, Deputy.

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363 Notice of Appeal.

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiff,
No. 3391. vs. Law.
United States of America, Defendant.

To: Cobb, Hoke, Benson, Krause & Faegre, Attorneys for Plaintiff, 1260 Northwestern Bank Building, Minneapolis, Minnesota.

You Will Please Take Notice, That the above-named defendant, United States of America, considering itself aggrieved by the judgment of the Court made and entered on the 9th day of April, 1937, does hereby appeal to the United States Circuit Court of Appeals for the Eighth Circuit from said judgment.

This appeal is taken upon questions of fact and of law and is based upon the records, files, assignments of error and other papers filed herein.

Dated at Saint Paul, Minnesota, this 6th day of July, A. D. 1937.

GEORGE F. SULLIVAN,
United States Attorney and
Attorney for Defendant.

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364 Return On Service of Writ.

United States of America,
District of Minnesota.—ss.:

I hereby certify and return that I served the annexed Notice of Appeal and Assignment of Errors on the therein-named Cobb, Hoke, Benson Krause & Faegre, attorneys for

plaintiff, 1260 Northwestern Bank Building, Minneapolis, Minnesota, by handing to and leaving a true and correct copy thereof with Hayner N. Larson, a member of above named firm of attorneys personally at Minneapolis in said District on the 7th day of July, A. D. 1937.

JOHN J. FARRELL,
U. S. Marshall,
By J. H. Littell, Deputy.

(Endorsed): Filed July 9, 1937. Margaret L. Mullane, Clerk, By Thomas H. Howard, Chief Deputy.

365 Assignment of Errors.

Comes now the defendant, the United States of America, by George F. Sullivan, United States Attorney for the District of Minnesota, its attorney, who by direction and authority of the Attorney General of the United States is about to file a petition for appeal from a decision or judgment of this Court rendered and entered on the 9th day of April, 1937, in this cause; and in connection with its petition for appeal hereby submits to the Court the following assignment of errors;

(1) The District Court erred in not sustaining defendant's motion filed May 4, 1936, to dismiss all causes of action purported to be stated in plaintiffs' petition, with the exception of the following:

(a) The cause of action for the recovery of $7,758.58 of tax, and $518.34 of interest paid thereon, by the Minnesota & Ontario Paper Company on April 23, 1930 under the first deficiency assessment made for the year 1928.

(2) The District Court erred in overruling defendant's objection to the admission of any evidence in the case,
366 said objection being on the ground that the Court does not have jurisdiction of any purported cause of action set out in the petition and on the further ground that the petition does not state facts sufficient to constitute a cause of action.

(3) The District Court erred in not sustaining the defendant's motion for judgment made and filed as of May 4, 1936, and in not entering judgment for the defendant.

(4) The District Court erred in not sustaining defendant's motion to dismiss made at the time that the plaintiffs rested

in the case; the said motion being a renewal of the motion to dismiss made and filed at the time of the commencement of the trial.

(5) The District Court erred in making and entering as finding of facts in the case all of the court's finding of facts numbered XV with the exception of sub-divisions M and N thereof, in that the court did not have jurisdiction to inquire into those matters.

(6) The District Court erred in failing to adopt and enter the conclusion of law requested by the defendant as follows:

(a) On account of failure of proof this action should be dismissed as against the plaintiffs and the United States should have judgment for its costs and disbursements herein.

(7) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(1) This proceeding is a proceeding brought for the recovery of overpayments of internal-revenue taxes for each of the years 1922 to 1925, inclusive, and 1928, together with interest on such overpayments from the respective dates of payment thereof.

367 (8) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(2) This Court has jurisdiction of the proceeding and of the whole thereof.

(9) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(3) Claims for refund of such overpayments were filed in the manner and within the time therefor prescribed by the statutes relating thereto.

(10) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(5) The claims for refund for the years 1922 to 1925, inclusive, were disallowed and rejected on August 31, 1933. The claim for refund for the year 1928 was disallowed and rejected July 13, 1933.

(11) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(6) This proceeding was commenced within the period permitted by law for that purpose.

(12) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(7) The grounds on which recovery of overpayments is sought in this proceeding for each of the years 1922 to 1925, inclusive, and 1928 were specified as grounds for refund in said claims for refund filed in respect of each of said years.

368 (13) The District Court erred in adopting and entering as a conclusion of law, the following, in that it is contrary to the law and the evidence:

(8) The amount of $791,200.51 paid to the Collector on March 22, 1926, as part of the total payment of $3,044,810.77 that day made to the Collector was and is at least in part interest, and if any portion thereof was penalty, such portion does not exceed the sum of $112,680.51. The Paper Company was and is entitled under Section 234 (a) (1) and (2) of the Revenue Act of 1926 to have said amount of $791,200.51 deducted from gross income for the purpose of determining taxable net income for the year 1926. Disallowance by the Commissioner of the deduction of $790,355.20 of said amount of $791,200.51 was and is without authority and contrary to law.

(14) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(9) The Paper Company and its affiliates were and are entitled to have their consolidated taxable net income for the year 1927 reduced by reason of any net loss sustained in the year 1926, all in accordance with the statutes in such case made and provided.

(15) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(10) The Paper Company and its affiliates were and are entitled to have their consolidated taxable net income for the year 1928 reduced by reason of any net loss sus-
369 tained in the year 1926 which was not absorbed by the consolidated taxable net income in the year 1927 as a

result of the deduction of said amount of $790,355.20 from gross income for the purpose of determining taxable net income for the year 1926, all in accordance with the statutes in such case made and provided.

(16) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(11) (a) The Paper Company and its affiliates sustained a consolidated net loss for the year 1926 in the amount of $541,722.10, which amount is apportionable according to law as follows:

Paper Company	$304,476.89
International Lumber Company	151,528.37
Minnesota, Dakota & Western Railway Company	15,676.35
Rainy River Improvement Company	18,450.73
Minnesota Forest Products Co.	51,589.76
Total	$541,722.10

(b) The Paper Company and its affiliates realized a consolidated net income for the year 1927 in the amount of $288,630.69, which amount is apportionable according to law as follows:

Paper Company	$275,442.33
Falls Lumber & Coal Company	13,188.36
	$288,630.69

After carrying forward the net losses sustained in respect of the year 1926 in the manner required by law, the taxable net income realized for the year 1927 by the Paper Company and its affiliates is the amount of $13,188.36, which amount was realized by Falls Lumber and Coal Company.

370 (c) The Paper Company and its affiliates realized a consolidated net income for the year 1928 in the amount of $187,094.55, which amount is apportionable according to law as follows:

Paper Company	$152,743.30
Minnesota, Dakota & Western Railway Company	23,692.22
Falls Lumber & Coal Company	10,659.03
Total	$187,094.55

After carrying forward, in the manner required by law, the balance of the net losses sustained in respect of the year 1926 and not absorbed by taxable net income realized in the year 1927, the taxable net income realized for the year 1928 by the Paper Company and its affiliates is the amount of $142,383.64, which amount was realized by the Paper Company and its affiliates as follows:

Paper Company	$123,708.74
Minnesota, Dakota & Western Railway Company	8,015.87
Falls Lumber & Coal Company	10,659.03
	$142,383.64

(d) No part of the assessment of $53,106.00 made by the Commissioner on October 31, 1931, in respect of the year 1926 was lawfully due or owing.

(e) Of the assessment of $60,894.56 made by the Commissioner on October 31, 1931, in respect of the year 1927, no part thereof was lawfully due or owing except the amount of $1,510.43 plus interest thereon from March 15, 1928, to October 31, 1931. Said amount of $1,510.43 is calculated as follows:

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Net income of Paper Company		$275,442.33
Net loss of Paper Company for 1926	$304,476.89	
Amount of said net loss allowable in 1927		275,442.33
Taxable net income of Paper Company		$ 0.00
Net income of Falls Lumber and Coal Company		13,188.36
Consolidated taxable net income		$ 13,188.36
Less exemption granted by Section 236 (b) of the Revenue Act of 1926		2,000.00
Consolidated taxable net income subject to tax		$ 11,188.36
Tax thereon at 13½%		1,510.43
Tax paid for 1927		0.00
Tax owing for 1927		$ 1,510.43

Of the assessment of $48,813.23 made by the Commissioner on October 31, 1931, in respect of the year 1928, no part thereof was lawfully due or owing except the amount of $9,327.85 plus interest thereon from March 15, 1929, to October 31, 1931. Said amount of $9,327.46 is calculated as follows:

Net income of Paper Company		$152,743.30
Less net loss of Paper Company for 1926 not absorbed in 1927		29,034.56
Taxable net income of Paper Company		$123,708.74
Net income of Minnesota, Dakota & Western Ry. Co.	$23,692.22	
Less net loss of said company for 1926 not absorbed in 1927	15,676.35	
Taxable net income of said company		8,015.87
Taxable net income of Falls Lumber & Coal Company		10,659.03
Consolidated taxable net income		$142,383.64
Tax thereon at 12%		17,086.04
Less tax paid		7,758.58
Tax owing for 1928		$ 9,327.46

372 (17) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(12) To the extent that the overpayments for the years 1922 to 1925, inclusive, and accumulated interest thereon were applied by the Commissioner as credits against the deficiency claimed by the Commissioner to be owing and unpaid for the year 1926, and to the extent that such overpayments and accumulated interest thereon were applied by the Commissioner as credits against the deficiences claimed by the Commissioner to be owing and unpaid for the years 1927 and 1928 in excess of the amounts lawfully due and owing for said years, as hereinbefore set forth, such applications and such credits were and are wholly wrongful and contrary to law, and such credits were and are void and of no effect.

(18) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and the evidence:

(13) The $164,525.98 accrued for the year 1921 in favor of the Fort Frances Company as interest owing by the Paper Company on open account by reason of newsprint paper purchased from the former by the latter was not and is not income derived from a source within the United States.

(19) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and to the evidence:

(14) No part of said amount of $164,525.98 was paid to the Fort Frances Company by the Paper Company until in the year 1927, and even if said amount constituted income derived from sources within the United States, there
373 was no obligation on the Paper Company in 1921 or at any time prior to such payment to deduct or withhold any portion of said amount or to report and pay the same to the Collector or the United States as a withholding tax.

(20) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and to the evidence:

(15) During the year 1921, the Paper Company, the Power Company, and the Fort Frances Company constituted and were engaged in related trades and businesses owned or controlled directly by the same interests within the meaning of Section 240 (d) of the Revenue Act of 1921.

(21) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and to the evidence:

(16) To the extent that accumulated interest on the overpayments for the years 1922 to 1925, inclusive, was applied by the Commissioner as credits against the deficiency of $31,121.89 in withholding taxes claimed by the Commissioner to be owing and unpaid for the year 1921, such application and such credits were and are wholly wrongful and contrary to law, and such credits were and are void and of no effect.

(22) The District Court erred in adopting and entering as a conclusion of law the following, in that it is contrary to the law and to the evidence:

(17) The plaintiffs are entitled to judgment for the recovery and refund of the following amounts:

(a) $15,909.39 paid on June 15, 1923, together with interest on said amount to October 31, 1931 (less, however, the sum of $1,839.15, being the total of the amount of $1,510.43 lawfully due and owing as additional tax for the year 1927 and of the amount of $328.72 interest thereon from March 15, 1928, to October 31, 1931), and together with interest on $14,070.24 (being the difference between said amounts
374 of $15,909.39 and $1,839.15) from and after October 31, 1931;

(b) $16,704.70 paid on September 15, 1923, together with interest on said amount to October 31, 1931 (less, however, the sum of $10,797.75, being the total of the amount of $9,327.46 lawfully due and owing as additional tax for the year 1928 and of the amount of $1,470.29 interest thereon from March 15, 1929, to October 31, 1931), and together with interest on $5,906.95 (being the difference between said amounts of $16,704.70 and $10,797.75) from and after October 31, 1931;

(c) $16,704.68 paid on December 15, 1923, together with interest on said amount from and after said date;

(d) $29,427.69 of the amount of $41,588.22 paid on December 14, 1924, together with interest on said $29,427.69 to July 10, 1933 (less, however, the sum of $22,241.52, being the amount lawfully due and owing as withholding taxes for the years 1930 and 1931 credited by the Commissioner on July 10, 1933), and together with interest on $7,186.17 (being the difference between said amounts of $29,427.69 and $22,241.52) from and after July 10, 1933;

(e) $6,172.50 of the amount of $17,731.74 paid on September 14, 1925, together with interest on said $6,172.50 from and after said date.

(f) $17,731.73 paid on December 14, 1925, together with interest on said amount from and after said date;

(g) $7,800.00 of the amount of $9,365.77 of the amount of $10,000 paid on March 13, 1926, together with interest on said $7,800.00 from and after said date.

Interest on said amounts is to be computed in accordance with the statutes in such cases made and provided, particularly Section 614 (a) (1) of the Revenue Act of 1928 and Section 177 (b) of the Judicial Code as amended by Section 615 (a) of the Revenue Act of 1928. In addition the plaintiffs are entitled to recover their costs and disbursements herein.

375 (23) The District Court erred in entering judgment in favor of the plaintiffs and against the United States in that the findings of fact are not sufficient to support the said judgment.

(24) The District Court erred in refusing to grant each and every part of defendant's requests for special findings of fact and conclusions of law.

Wherefore, defendant prays that the judgment heretofore rendered by the District Court herein be reversed and that the said cause be remanded to the District Court with instructions to enter judgment for the defendant, dismissing plaintiffs' petition.

GEORGE F. SULLIVAN,
United States Attorney.

LINUS J. HAMMOND,
Assistant United States Attorney,
Attorneys for Defendant.

(Endorsed): Service of the within Notice of Appeal and Assignment of Errors is admitted this 7th day of July, 1937.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiff.

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376 Order Allowing Appeal.

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiff,
No. 3391. vs. Law.
United States of America, Defendant.

The above-named defendant, United States of America, having duly presented its petition for appeal and having duly served and filed its Notice of Appeal and Assignments of Error and no bond on appeal being required of defendant under Section 1001 of the Revised Statutes of the United States, the Court being satisfied that this appeal is taken by direction of the Attorney General of the United States as appears from a radiogram from the Attorney General, dated July 1, 1937, copy of which is attached to the Peti-

tion for Appeal, the prayer of said defendant United States of America is hereby granted and accordingly, it is

Ordered, That the appeal of said defendant United States of America be and the same is hereby allowed.

Dated at Minneapolis, Minnesota, this 9th day of July, A. D. 1937.

GUNNAR H. NORDBYE,
Judge of the United States District Court.

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377 Petition for Appeal.

The above named defendant, the United States of America, considering itself aggrieved by the judgment entered in the above-entitled cause on the 9th day of April, 1937, and desiring to appeal from said judgment in said cause to the United States Circuit Court of Appeals for the Eighth Circuit, presents herewith its Notice of Appeal and Assignments of Error, no bond on appeal being required of defendant under Section 1001 of the Revised Statutes of the United States, this appeal being taken by the direction of the Attorney General of the United States as appears from the radiogram from the Attorney General dated July 1, 1937, copy of which is attached hereto and defendant prays for an order of this court allowing said appeal and for a citation directed to the above-named plaintiffs C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, requiring them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of Saint Louis, Missouri, within forty days from and after the date of said citation pursuant to said appeal. Dated at Saint Paul, Minnesota, this 6th day of July, A. D. 1937.

UNITED STATES OF AMERICA,
By George F. Sullivan,
United States Attorney and Attorney for Defendant.

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378 Signal Corps, United States Army

47 WVU Z 37 JUS

Washington DC 322P Jul 1 1937

George F Sullivan
U S Atty St Paul Minn

Inre Jaffray and Robinson Trustees Law Number Three Three Nine One Refund Suit Time in Which to Appeal Ex-

pires July Nine Stop Protect Interests of Government by Perfecting Appeal Stop Draft of Assignment of Errors Mailed Today

JAS W MORRIS.

527P

(Endorsed): Filed July 9, 1937. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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379 Citation on Appeal.

United States District Court, District of Minnesota, Fourth Division.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, Plaintiff,
No. 3391. vs. Law.
United States of America, Defendant.

The United States of America to the above named plaintiffs, C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, and to their attorneys, Cobb, Hoke, Benson, Krause & Faegre, 1260 Northwestern Bank Building, Minneapolis, Minnesota.

You Are Hereby Cited And Admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit in the city of Saint Louis, in the state of Missouri, forty days from and after the date of this citation, pursuant to an appeal taken and filed in the office of the Clerk of the United States District Court for the District of Minnesota, notice of said appeal having been served upon you in the above-entitled cause wherein the United States of America above named is the appellant and you are the appellee, to show cause, if any there be, why the judgment rendered against said appellant in said cause should not be reversed and why speedy justice should not be done to said appellant in that behalf.

Dated at Minneapolis, Minnesota, this 9 day of July, A. D. 1937.

GUNNAR H. NORDBYE,
Judge of the United States District Court for the District of Minnesota.

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380 Return on Service of Writ.

United States of America,
District of Minnesota—ss.:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named C. T. Jaffray as one of the Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, by handing to and leaving a true and correct copy thereof with him personally at Minneapolis in said District on the 9th day of July, A. D. 1937.

And at the same time and place did exhibit to the said C. T. Jaffray, the signature of the Court as it appears on the Original Citation.

JOHN J. FARRELL,
U. S. Marshal.
By J. H. Littell, Deputy.

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381 Return on Service of Writ.

United States of America,
District of Minnesota—ss.:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named S. M. Archer as one of the Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, by handing to and leaving a true and correct copy thereof with him personally at Minneapolis in said District on the 9th day of July, A. D. 1937.

And at the same time and place did exhibit to the said S. M. Archer the signature of the Court as it appears on the Original Citation.

JOHN J. FARRELL,
U. S. Marshal.
By J. H. Littell, Deputy.

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382 Return on Service of Writ.

United States of America,
District of Minnesota—ss.:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named R. H. M. Robinson as one of the Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, and who at this time is a resident without the State of Minnesota, by service on Cobb, Hoke, Benson, Krause and Faegre, attorneys for

the Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, by handing to and leaving a true and correct copy thereof with Haynor N. Larson, a member of above named Firm of Attorneys personally at Minneapolis in said District on the 9th day of July, A. D. 1937.

And at the same time and place did exhibit to the said Haynor N. Larson the signature of the Court as it appears on the Original Citation.

JOHN J. FARRELL,
U. S. Marshal.
By J. H. Littell, Deputy.

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383 Return on Service of Writ.

United States of America,
District of Minnesota—ss.:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named Cobb, Hoke, Benson, Krause and Faegre, Attorneys for the Trustees of the Estate of the Minnesota and Ontario Paper Company, a Corporation, by handing to and leaving a true and correct copy thereof with Haynor N. Larson, a member of above named Firm of Attorneys, personally at Minneapolis in said District on the 9th day of July, A. D. 1937.

And at the same time and place did exhibit to the said Haynor N. Larson the signature of the Court as it appears on the Original Citation.

JOHN J. FARRELL,
U. S. Marshal.
By J. H. Littell, Deputy.

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384 Service of the within Citation on Appeal is admitted this 9th day of July, 1937.

COBB, HOKE, BENSON,
KRAUSE & FAEGRE,
Attorneys for Plaintiff.

Endorsed: Filed in U. S. District Court on July 15, 1937.

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385 Order Enlarging Citation.

Upon the application of the United States Attorney for the District of Minnesota in this behalf and the Court

being satisfied that the record on the appeal of above cause cannot be prepared and transmitted to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit within the period of forty (40) days specified in the original Citation issued on said appeal, and it being the intention of the undersigned shortly to be absent from his Chambers on vacation, and the undersigned is advised that one of the attorneys for department assigned to the preparation of the record on appeal is to be absent on vacation and may not return within the unexpired portion of the period specified in said original Citation—

Now, Therefore, It Is Ordered That the original Citation, dated and issued July 9, 1937, in above cause on appeal as aforesaid, and the original period of forty (40) days specified therein, be and the same hereby are enlarged and extended to and including September 27, A. D. 1937.

Dated at Minneapolis, Minnesota, this 2nd day of August, A. D. 1937.

GUNNAR H. NORDBYE,
United States District Judge for the District of Minnesota.

(Endorsed): Filed August 2, 1937. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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386 Stipulation of Parties as to Praecipe for Transcript of Record.

It Is Hereby Stipulated by and between the parties hereto, through their respective attorneys, that the following be included in the Praecipe for Transcript of the Record on Appeal in the above entitled case:

(1) Petition;

(2) Affidavit of Service by Juliana Helvorson and Frank Janes;

(3) Demurrer;

(4) Motion and Order amending the petition so as to include Archer as one of the plaintiffs;

(5) Order of July 1, 1935 sustaining the demurrer with leave to amend;

(6) Petition for and Order granting re-hearing;

(7) Order of July 30, 1935 modifying Order of July 1, 1935, and overruling demurrer.

(8) Answer;

(9) Reply;

(10) Motion and Order dated May 4, 1936 amending Section XVI of the Petition; (Included in Bill of Exceptions)

(11) Findings of Fact, Conclusions of Law, and Order for Judgment;

(12) Judgment;

(13) Bill of Exceptions (together with Stipulation and Order settling same);

(14) Notice of Appeal;

(15) Petition for Appeal;

(16) Assignment of Errors;

(17) Order allowing Appeal without Bond;

(18) Citation;

(19) Any Order enlarging Citation;

(20) Praecipe;

(21) Election to file typewritten transcript to be printed under supervision of the Clerk.

Dated this 10th day of September, A. D. 1937.

J. B. FAEGRE,
HAYNER N. LARSON,
Attorneys for Plaintiffs.

VICTOR E. ANDERSON,
United States Attorney.

LINUS J. HAMMOND,
Assistant United States Attorney.

J. E. GARVEY,
Special Assistant to the Attorney General.

(Endorsed): Filed September 10, 1937. Margaret L. Mullane, Clerk. By Chell M. Smith, Deputy.

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387 Election as to Printing of Record.

To the Clerk of the United States District Court for the District of Minnesota:

In pursuance of the praecipe therefor filed in the above-entitled cause, you are hereby respectfully requested to prepare the transcript in typewritten form on the appeal by the above-named United States of America, defendant, taken from the judgment entered on the 9th day of April, 1937, in said cause in order that said transcript may be filed in the

office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit at the city of Saint Louis, Missouri.

And the said defendant United States of America hereby elects to have the record in said cause on appeal as aforesaid printed under supervision of the Clerk of the Circuit Court of Appeals for the Eighth Circuit. Dated this 17th day of July, A. D. 1937.

GEORGE F. SULLIVAN,
United States Attorney and Attorney for Defendant.

(Endorsed): Filed July 28, 1937. Margaret L. Mullane, Clerk. By Thomas H. Howard, Chief Deputy.

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388 (Clerk's Certificate to Transcript.)

United States of America, District Court of the United States, District of Minnesota, Fourth Division.

I, Margaret L. Mullane, Clerk of said District Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 388 pages, including page 276A, numbered consecutively from 1 to 387, inclusive, is a true and complete transcript of the record and proceedings in said cause, wherein C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of the Minnesota and Ontario Paper Company, a corporation, Debtor, are plaintiffs, and United States of America is defendant, and of the whole thereof (except as modified by the stipulated praecipe of said parties, to be found at page 386 of said transcript) as appears from the original records and files of said Court; and I do hereby further certify and return that I have annexed to said transcript and included within said paging the original Citation, together with proof of service thereof.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court at Minneapolis, in the District of Minnesota, this 25th day of September, A. D. 1937.

(Seal)
U. S. Dist. Court
Dist. of Minn.
Fourth Div.

MARGARET L. MULLANE,
Clerk.

By Thomas H. Howard,
Chief Deputy Clerk.

Filed Sep. 27, 1937. E. E. Koch, Clerk.

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

Appearance of Mr. James W. Morris and Mr. Sewall Key as counsel for appellant

United States Circuit Court of Appeals for the Eighth Circuit

Case No. 11023

UNITED STATES, APPELLANT

v.

C. T. JAFFRAY AND R. H. M. ROBINSON

The Clerk will enter our appearances as Counsel for the Appellant.

JAMES W. MORRIS,
Assistant Attorney General.
SEWALL KEY,
Special Assistant to the Attorney General.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Sept. 27, 1937.

Appearance of Mr. Victor E. Anderson, Mr. J. E. Garvey, and Mr. Linus J. Hammond as counsel for appellant

The Clerk will enter my appearance as Counsel for the Appellant.

VICTOR E. ANDERSON,
United States Attorney for the District of Minnesota.
J. E. GARVEY,
Special Assistant Attorney General.
LINUS J. HAMMOND,
Assistant United States Attorney for the District of Minnesota.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Sept. 30, 1937.

Appearance of Mr. Warren F. Wattles as counsel for appellant

The Clerk will enter my appearance as Counsel for the Appellant.

WARREN F. WATTLES,
Special Asst. to Attorney General.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Mar. 15, 1938.

102523—38——1

Appearance of counsel for appellees

The Clerk will enter my appearance as Counsel for the Appellees.

J. B. Faegre,
Hayner N. Larson,
1200 Northwestern Bank Building,
Minneapolis, Minnesota.

Cobb, Hoke, Benson, Krause & Faegre,
Of Counsel.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Oct 6, 1937.

Order of submission

March Term, 1938

Tuesday, March 15, 1938

This cause having been called for hearing in its regular order, the same was argued by Mr. Warren F. Wattles, Special Assistant to the Attorney General, for appellant and by Mr. Hayner N. Larson for appellee.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

Opinion

United States Circuit Court of Appeals, Eighth Circuit

No. 11,023—May Term, A. D. 1938

United States of America, appellant

vs.

C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a Corporation, Debtor, appellees

Appeal from the District Court of the United States for the District of Minnesota

[June 27, 1938]

Mr. Warren F. Wattles, Special Assistant to the Attorney General (Mr. James W. Morris, Assistant Attorney General, Mr. J. Louis Monarch, Special Assistant to the Attorney General, Mr. Victor E. Anderson, United States Attorney, and Mr. Linus J. Hammond, Assistant United States Attorney, were with him on the brief) for Appellant. Mr. Hayner N. Larson (Mr. J. B. Faegre and Messrs. Cobb, Hoke, Benson, Krause & Faegre were with him on the brief) for Appellees.

Before GARDNER, SANBORN, and THOMAS, Circuit Judges.

SANBORN, Circuit Judge, delivered the opinion of the Court.

This is a suit brought by the trustees of the estate of Minnesota and Ontario Paper Company, which is in reorganization under Section 77B of the Bankruptcy Act, to recover from the United States overpayments of income taxes for the years 1922 to 1925 inclusive. The case was tried to the court, without a jury, upon an agreed statement of facts, and from a judgment in favor of the trustees, this appeal is taken.

For the years 1922 to 1925, inclusive, the taxpayer[1] made its returns and paid its income taxes to Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota, who was out of office when this suit was commenced. Timely claims for refund of taxes for each of the four years were filed. As a result of negotiations between the Commissioner and the taxpayer, it was determined that the taxpayer had overpaid its taxes for 1922 by $49,318.77, for 1923 by $29,427.69, for 1924 by $23,904.23, and for 1925 by $7,900.00; and the Commissioner issued certificates of overassessment so indicating.

For the years 1917, 1918, 1919, and 1920 the taxpayer had negligently understated and underpaid its income taxes. The Commissioner of Internal Revenue had determined a large deficiency for each of those years. The taxpayer filed with the Board of Tax Appeals petitions for redeterminations of the alleged deficiencies. On February 25, 1926, the taxpayer and the Commissioner entered into a stipulation for the determination and assessment of the deficiencies for the years 1917 to 1920, inclusive. The last paragraph of the stipulation read as follows:

"It is further stipulated and agreed that the understatement of the amount of the taxable net income as shown by the returns filed by the taxpayer herein for each of the taxable years 1917, 1918, 1919, and 1920 was due to negligence on the part of the taxpayer but without intent to defraud."

On the same day the Commissioner wrote the taxpayer as follows:

"Confirming the agreement made with the Commissioner of Internal Revenue on February 24, 1926, you are advised that the amount of the penalty to be assessed against you as the result of the negligent understatement of your tax liability for the taxable years 1917, 1918, 1919, and 1920 will be compromised by accepting a sum equal to 6 per cent per annum on the deficiencies determined and assessed in accordance with the stipulation this date entered into between the taxpayer and the representative of this office, from the date the deficiencies became due and payable to the date of payment."

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[1] The word "taxpayer" as used in this opinion is intended to cover the Paper Company, its affiliates, and its trustees.

On February 26, 1926, a further stipulation was entered into in which it was agreed that the deficiencies should be determined by the Board of Tax Appeals in accordance with the stipulation entered into by the taxpayer and the Commissioner on February 25, 1926. On the same day the Board entered, in the proceedings relative to these taxes, an order that the tax liability should be so determined.

On March 6, 1926, there was filed with the Board a stipulation that the amount of the deficiency due from the taxpayer for each of the taxable years 1917, 1918, 1919, and 1920 was as follows:

	Tax	Penalty
1917	[illegible]	[illegible]
1918	[illegible]	[illegible]
1919	[illegible]	[illegible]
1920	[illegible]	[illegible]
Total	[illegible]	[illegible]

The Board entered three orders, similar in form, determining the deficiencies for the years 1917 to 1920, inclusive. The order relating to the 1917 tax was as follows:

"Now on this sixth day of March 1926 the above entitled appeal coming on for hearing on the stipulation of the taxpayer and the Commissioner, signed and executed by their respective counsel, and it appearing from said stipulation and other documentary evidence submitted that the true tax liability of the Minnesota & Ontario Paper Co. and its affiliated corporations for the taxable year 1917 is $531,073.65 of which the sum of $41,540.25 has heretofore been paid, and the sum of $901,379.16 has heretofore been assessed, and it further appearing that there is due a penalty of $227,633.03, no part of which has been assessed or paid:

"Now, therefore, it is considered and

"Ordered that the amount of tax deficiency and penalty due from the taxpayer be and the same is hereby redetermined for the year 1917 to be $489,533.40 tax, and $227,633.03 penalty, and that of the tax heretofore assessed there shall be abated the sum of $270,205.51, and the amount of the penalty of $227,633.03 shall be assessed and paid."

The stipulation referred to in the Board's orders was the stipulation last mentioned. The "other documentary evidence" referred to by the Board was a computation which was prepared by representatives of the Commissioner and representatives of the taxpayer, and filed with the Board March 6, 1926. This computation was made in accordance with the stipulation of February 25, 1926, settling the tax liability of the taxpayer for the years 1917 to 1920, inclusive. In this computation the amounts which the Board in its orders refers to as "penalty" are designated as "penalty interest on tax deficiencies" and as "interest." The total amount of "in-

rest" as shown by the computation is $788,879.21. The computation was approved in writing by the taxpayer and also by the Treasury Department.

Pursuant to the orders of the Board of Tax Appeals redetermining the deficiencies agreed to, the Commissioner caused the Collector of Internal Revenue for the District of Minnesota to make demand upon the taxpayer for the payment of the total amount found by the Board to be due for the years in question, which aggregated $3,044,810.77. Of this amount, $1,764,076.86 was the total tax deficiency for the years 1918, 1919, and 1920; $788,879.21 was "penalty" for the years 1917 to 1920, inclusive; and $2,321.30 was additional interest added by the Commissioner for the years 1919 and 1920. The taxpayer paid to the Collector, on March 22, 1926, the full amount demanded.

In its return for the year 1926 the taxpayer deducted from gross income $790,355.20 of the "penalty" and interest included in the amount which it paid to the Collector on March 22, 1926. By taking this deduction the taxpayer showed a net loss for 1926, and the carrying forward of this net loss, as authorized by Sections 117 (b) and (c) of the Revenue Act of 1928 (45 Stat. 791, 825, 826) left a tax liability of only $1,510.43 for 1927, and of $9,327.46 for 1928. The Commissioner, upon an audit of the taxpayer's returns for the years 1926 to 1928, inclusive, concluded that the deduction by the taxpayer of the "penalty" and interest paid in 1926 was improper, and he determined deficiencies as follows: for 1926, $42,884.00; for 1927, $47,445.12; for 1928, $14,270.13.

This was the situation which existed when, on August 31, 1933, the Commissioner notified the taxpayer that its claim for refund of taxes for the years 1922 to 1925, inclusive, were allowed to the extent indicated by the certificates of overassessment. The certificates stated that the overpayments allowed would not be refunded, but "credited" to taxes claimed to have been underpaid for other years. The principal of the overpayments for the years 1922 to 1925, inclusive, was credited by the Commissioner upon the alleged deficiencies determined by him for the years 1926 to 1928, inclusive. The interest upon such overpayments the Commissioner credited against withholding taxes claimed to have become due from the taxpayer in 1921, but which, it is now conceded, were not collectible.

The taxpayer thereupon commenced this suit to recover the overpayments for the years 1922 to 1925, inclusive, under Section 24 (20) of the Judicial Code [§ 41 (20), Title 28, U. S. C.] giving to the District Courts jurisdiction of suits against the United States for the recovery of taxes erroneously collected by a Collector who is out of office at the time suit is commenced.

The taxpayer contended that there were no deficiencies in taxes for the years 1926 to 1928, inclusive, and that the crediting by the Commissioner of the overpayments for the years 1922 to 1925, inclusive, against nonexistent deficiencies in taxes for other years constituted a denial of the taxpayer's refund claims.

The Government contended that the Commissioner, in allowing the overpayments and crediting them against alleged deficiencies for other years, had granted the taxpayer's claims for refunds; that the crediting of the overpayments to the claimed deficiencies for the years 1926 to 1928, inclusive, had the effect of paying or overpaying the taxes for those years, and that, since the taxpayer had filed no claims for the refund of taxes for those years, and since it was the action of the Commissioner, and not of the Collector, which caused the crediting of the overpayments to the alleged deficiencies, the court below was without jurisdiction. (See Lowe Brothers Co. v. United States, — U. S. —, 58 S. Ct. 896.) The Government also contended that the deduction made by the taxpayer in 1926 was properly disallowed, and resulted in the deficiencies determined by the Commissioner for the years 1926 to 1928, inclusive.

The court below decided that it was the overpayments which were made by the taxpayer to the Collector for the years 1922 to 1925, inclusive, which were in controversy; that the court had jurisdiction of the case; that the deduction made by the taxpayer from gross income in 1926, whether penalty or interest or both, was a lawful deduction, and hence the crediting by the Commissioner of the overpayments for the years 1922 to 1925 to the claimed deficiencies for the years 1926 to 1928 was unlawful to the extent that such deficiencies were created by the failure of the Commissioner to allow the deduction.

Two questions are presented for determination:

(1) Was this suit maintainable as one to recover the overpayments which were admittedly made to the Collector by the taxpayer for the years 1922 to 1925, and for which timely claims for refund had been filed?

(2) If so, was the amount paid by the taxpayer in 1926 as penalty, interest, or both, under its agreement with the Commissioner settling its tax liability for the years 1917 to 1920, deductible from its gross income in 1926?

1. The taxpayer had a right to maintain this suit for the recovery of the overpayments made by it to the Collector. United States ex rel. Girard Trust Co. v. Helvering, 301 U. S. 540, 542; United States v. Savings Bank, 104 U. S. 728; National Fire Ins. Co. v. United States (Ct. Cl.), 52 F. (2d) 1011, 1013, 1014; Ohio Steel Foundry Co. v. United States (Ct. Cl.), 38 F. (2d) 144, 149; Churchill v. Welch (D. C.), 12 F. Supp. 174; Libby, McNeill & Libby v. United States (Ct. Cl.), 9 F. Supp. 673, 680; American Woolen Co. v. United States (Ct. Cl.), 18 F. Supp. 783, 788; Pratt & Whitney Co. v. United States (Ct. Cl.), 6 F. Supp. 574, 10 F. Supp. 148, certiorari denied, 295 U. S. 760; Moses v. United States, 2 Cir., 61 F. (2d) 791, certiorari denied 289 U. S. 743; John F. Jelke Co. v. Smietanka, 7 Cir., 86 F. (2d) 470, certiorari denied 300 U. S. 669. The cause of action accrued at the time the overpayment was made to the Collector. Guettel v. United States, 8 Cir., 95 F. (2d) 229. The

crediting of the overpayments, by the Commissioner, against taxes due from the taxpayer for other years was a matter of defense, a justification for the failure to refund, and not a matter which destroyed the taxpayer's cause of action or ousted the court of jurisdiction. In the taxpayer's suit the Government, to justify its retention of the overpayments or any part of them, might assert any defense, legal or equitable, Stone v. White, 301 U. S. 532; Crossett Lumber Co. v. United States, 8 Cir., 87 F. (2d) 930, for "in such a suit the Commissioner may secure a final adjudication of his right to withhold the overpayment • • • on the ground that other taxes are due from the taxpayer, or that upon other grounds he is not equitably entitled to the refund," United States ex rel. Girard Trust Co. v. Helvering, supra [301 U. S.] p. 543; and the taxpayer could only recover so much of its overpayments as it could show that the Government was not entitled to retain.

We need not decide whether the taxpayer might have filed claims for refund of taxes for the years 1926 to 1928, inclusive, upon the theory that the taxes for those years had been overcredited.[5]

2. In computing the taxpayer's liability for the years 1917 to 1920, inclusive, for the purpose of settlement of the deficiencies for those years, the 6% interest upon the deficiencies which the Commissioner agreed to accept in "compromise" of "the penalty to be assessed • • • as the result of the negligent understatement of • • • tax liability for the taxable years 1917, 1918, 1919, and 1920," variously referred to as "penalty interest on tax deficiency," and "total interest," and "penalty," is shown to be $788,879.21. That amount must have been one of three things: (1) a pure penalty for negligence; (2) interest on taxes due the Government; or (3) both penalty and interest. No negligence penalty for the year 1917 could lawfully have been imposed, since there was then no statute which authorized the imposition of any penalty for a negligent understatement of the tax. (The Revenue Act of 1916, Sec. 18, imposed a penalty and interest for failure to file a return and for making a false return, 39 Stat. 775.) Section 250 (b) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1083, provided: "If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency, plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due." Since the total deficiency for the years 1918, 1919, and 1920 was $1,764,076.86, the 5% statutory penalty for negligence which might

[5] United States v. Swift & Co., 282 U. S. 466; Routzahn v. Reeves Bros. Co., 6 Cir., 59 F. (2d) 915, certiorari denied, 287 U. S. 650; Gans S. S. Line v. Bowers, 2 Cir., 82 F. (2d) 181, certiorari denied, 298 U. S. 676; United States v. Reeves Bros. Co., 6 Cir., 83 F. (2d) 121, certiorari denied, 299 U. S. 573; Moses v. United States, 2 Cir., 61 F. (2d) 791, certiorari denied, 289 U. S. 743; United States v. Piedmont Mfg. Co., 4 Cir., 89 F. (2d) 296; United States v. John Gallagher Co., 6 Cir., 83 F. (2d) 288; Lowe Bros. Co. v. United States, 6 Cir., 92 F. (2d) 905, affirmed May 16, 1938, — U. S. —, 58 S. Ct. 998. Compare Arthur C. Harvey Co. v. Malley (D. C.), 32 F. (2d) 885; Parks & Woolson Mach. Co. v. United States (Ct. Cl.), 58 F. (2d) 868, certiorari denied, 287 U. S. 634; Rosenstadt & Waller, Inc. v. United States (Ct. Cl.), 7 F. Supp. 287.

have been imposed was $88,203.84. (See United States v. Childs, 266 U. S. 304.) The Commissioner could not have intended to compromise a negligence penalty of $88, 203.84 by imposing a negligence penalty of $788,879.29. That would have been a contradiction in terms. What the taxpayer and the Commissioner evidently agreed to was that there should be added to the deficiencies in taxes for 1917, 1918, 1919, and 1920, 6% per annum, instead of the statutory 5% penalty and 1% per month interest upon the deficiencies for 1918, 1919, and 1920. It is as unreasonable to suppose that the exaction was all interest as to suppose that it was all penalty. So much of it as the taxpayer could show was interest was deductible from gross income in 1926.[3] It was unable to show that $88,203.84 of the exaction was not pure penalty, "the cost of delinquency." United States v. Childs, supra. The balance only of the exaction would, therefore, be deductible as interest.

But the Government contends that no part of the exaction may be regarded as interest because the Board in its orders, which were final and binding, referred to it as "penalty." It points to Backus v. United States, 59 F. (2d) 242 (certiaroari denied, 288 U. S. 610), in which the Court of Claims held that the taxpayer's stipulations for the settlement of its tax liability for the years 1917 to 1920 were binding and that the consent orders of the Board were final and conclusive.

The question whether the amounts denominated "penalty" in the orders of the Board included also interest and whether the payment of them would entitle the taxpayer to a deduction from its gross income for the year 1926 was not before the Board. The function which the Board performed was to give effect to the stipulation of the parties. Its consent orders were conclusive as to the liability of the taxpayer. What the Board referred to as "penalty," the taxpayer and the Commissioner had also referred to as "penalty" in their stipulation. In using the words "penalty interest" and "penalty," the Commissioner, the taxpayer, and the Board evidently had in mind the exaction authorized by statute in case of a negligent understatement of taxes. It is not unreasonable to refer to the entire statutory exaction as a "penalty," although that portion of it which is interest at 1% a month has been held to be mere compensation for delay.

We think that the orders of the Board did not convert so much of the "penalty" as was in fact deductible into a nondeductible item.

The court below concluded that so much of the exaction as was penalty and not interest would nevertheless, be deductible as an ordinary and necessary expense of operating the business of the tax-

[3] Interest paid upon federal taxes is a deductible item. Section 234(a)(2) of the Revenue Act of 1926 (44 Stat., Part 2, p. 9, 41) provides that "all interest paid or accrued within the taxable year on its [the taxpayer's] indebtedness" shall be allowed as a deduction from gross income. Interest paid upon federal taxes is interest on a debt. United States v. Childs, supra; Price v. United States, 269 U. S. 492, and is deductible. Penrose v. United States (D. C.), 18 F. Supp. 413; Klein's Federal Income Taxation, page 461, par. 16:18. See ruling of the Solicitor of Internal Revenue, O. 922, 2 Cumulative Bulletin, 227.

payer.[4] The reasons which the court gives for that conclusion are persuasive. It is conceivable that a negligence penalty might be imposed under circumstances which would warrant its deduction as an ordinary and necessary business expense, but we should hesitate to say that all negligence penalties were always, or were usually, of that character. A penalty paid for a negligent understatement of taxes does not readily fit into the concept of an ordinary and necessary business expense. No doubt there are degrees of negligence in such matters. Without knowing more than what the record here shows, we think it cannot be said that whatever was exacted from this taxpayer by way of punishment for negligence was an ordinary and necessary expense of its business. The Commissioner disallowed the deduction. His ruling has the presumption of correctness. Welch v. Helvering, 290 U. S. 111, 115. The difficulties encountered in attempting to determine what are and what are not ordinary and necessary business expenses are well illustrated by the language of that opinion on pages 114–115:

"Here, indeed, as so often in other branches of the law, the decisive distinctions are those of degree and not of kind. One struggles in vain for any verbal formula that will supply a ready touchstone. The standard set up by the statute is not a rule of law; it is rather a way of life. Life in all its fullness must supply the answer to the riddle."

And (page 115):

"Unless we can say from facts within our knowledge that these are ordinary and necessary expenses according to the ways of conduct and the forms of speech prevailing in the business world, the tax must be confirmed."

We cannot say that, "according to the ways of conduct and the forms of speech prevailing in the business world," every statutory penalty imposed for a negligent understatement of taxes due is an ordinary and necessary expense to be charged against income, and not against capital. The Board of Tax Appeals has consistently refused to treat exactions made by way of punishment for derelictions as ordinary and necessary expenses of a business. Backer, et al., Executors, 1 B. T. A. 214; Columbus Bread Co., 4 B. T. A. 1126; Great Northern Ry. Co., 8 B. T. A. 225; Atlantic Terra Cotta Co., 13 B. T. A. 1289; Bonnie Bros, Inc., 15 B. T. A. 1231; Kossar & Co., 16 B. T. A. 952; Terminal R. Association of St. Louis, 17 B. T. A. 1135, 1169; B. E. Levinstein, 19 B. T. A. 99. For example, in Kossar & Co., supra, the Board of Tax Appeals disallowed a claimed deduction for penalty and interest imposed in connection with a State franchise tax. In Great Northern Ry. Co. v. Commissioner, 8 Cir., 40 F. (2d) 372, this Court sustained the Board's refusal to permit the Great Northern Railway Company to deduct, as ordi-

[4] Sec. 234 (a) (1) of the Revenue Act of 1926, 44 Stat., Part 2, p. 9, 41, provides that in computing the net income of a corporation, there shall be allowed as a deduction "all the ordinary and necessary expenses paid or incurred."

nary and necessary expenses of its business, penalties paid for violation of federal statutes and regulations. See, also, Burrough Building Material Co. v. Commissioner, 2 Cir., 47 F. (2d) 178; C. R. I. & P. Ry. Co. v. Commissioner, 7 Cir., 47 F. (2d) 990; Tunnel R. R. of St. Louis v. Commissioner, 8 Cir., 81 F. (2d) 166. Compare National Outdoor Advertising Bureau, Inc. v. Helvering, 8 Cir., 89 F. (2d) 879, 881.

The taxpayer regards these cases as inapplicable, relating, as they do, to penalties for violations of criminal or quasi-criminal statutes, while here the penalty is purely civil. Helvering v. Mitchell, — U. S. —, 58 S. Ct. 630. It refers to Helvering v. Hampton, 9 Cir., 79 F. (2d) 358, and Anderson v. Commissioner, 10 Cir., 81 F. (2d) 457, 460, which recognize the right to deduct, as an ordinary and necessary business expense, damages for injuries to third persons resulting from tortious acts committed in the course of business. Damages for tort are imposed as compensation to an injured person, and not by way of punishment to the tort-feasor. McAllister v. Sloan, 8 Cir., 81 F. (2d) 707, 710; Miller v. Robertson, 266 U. S. 243, 257; Birdsall et al. v. Coolidge, 93 U. S. 64, 68–69; Dow v. Humbert et al., 91 U. S. 294, 299; Wicker v. Hoppock, 6 Wall. 94, 99. "The term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution." United States v. Chouteau, 102 U. S. 603, 611. It is true that at one time the Treasury Department recognized that negligence penalties might be deductible depending upon the facts and circumstances under which they were imposed. O. 926, 1 Cumulative Bulletin, 241, 242. This ruling, it seems, was later revoked in G. C. M. 11, 358, XII–1, Cumulative Bulletin 29, on the theory that it was in conflict with Great Northern Ry. Co. v. Commissioner, supra [40 F. (2d) 372]; Burroughs Building Material Co. v. Commissioner, supra [47 F. (2d) 178], and C. R. I. & P. Ry. Co. v. Commissioner, supra [47 F. (2d) 990].

We go no further than to hold that in this case the taxpayer failed to show that so much of the exaction as was punitive was an ordinary and necessary expense of its business.

Our conclusions are as follows: (1) The suit was maintainable as one to recover the overpayments made by the taxpayer to the Collector for the years 1922 to 1925, inclusive. (2) Five per cent of the amount paid by the taxpayer in 1926 on deficiencies in taxes for the years 1918, 1919, and 1920 constituted a negligence penalty which was not deductible from gross income. The balance of the negligence "penalty" and interest paid by the taxpayer in 1926 was deductible from gross income.

The case is remanded to the court below with directions to amend the judgment in conformity with this opinion. When so amended, the judgment will stand affirmed.

Judgment

United States Circuit Court of Appeals, Eighth Circuit

May Term, 1938

Wednesday, June 29, 1938

No. 11023

UNITED STATES OF AMERICA, APPELLANT

vs.

C. T. JAFFRAY, R. H. M. ROBINSON, AND S. M. ARCHER, AS TRUSTEES OF THE ESTATE OF MINNESOTA AND ONTARIO PAPER COMPANY, A CORPORATION, DEBTOR

Appeal from the District Court of the United States for the District of Minnesota

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to amend the judgment in conformity with the opinion of this Court filed herein June 27, 1938, and when so amended the judgment of the District Court will stand affirmed.

It is further ordered that no costs be taxed in favor of either of the parties in this Court.

And it is further ordered that a certified copy of the opinion of this Court be transmitted with the mandate when issued to the said District Court.

June 29, 1938

In the United States Circuit Court of Appeals, Eighth Circuit

No. 11023

UNITED STATES OF AMERICA, APPELLANT

vs.

C. T. JAFFRAY, R. H. M. ROBINSON, AND S. M. ARCHER, AS TRUSTEES OF THE ESTATE OF MINNESOTA AND ONTARIO PAPER COMPANY, A CORPORATION, DEBTOR, APPELLEES

Appellant's petition for rehearing

To the United States Circuit Court of Appeals for the Eighth Circuit, and the Judges Thereof:

Comes now the United States of America and presents this its petition for rehearing of the above-entitled cause and in support thereof respectfully shows:

The Court has affirmed a judgment of the United State District Court for the District of Minnesota, Fourth Division, for recovery of income taxes paid by taxpayer and its affiliates) for the year 1922 although (on or about September 30, 1930, and) prior to the institution of the action in the court below (No. 3391 at law in that court) the taxpayer had instituted an action in the United States District Court of Minnesota, Third Division (No. 2245 at law) for the recovery of the same income taxes overpaid for the year 1922 (R. 135, R. 148–151) and that action had been "dismissed with prejudice" on August 1, 1933, by the United States District Court for the District of Minnesota, Third Division (R. 144). The taxpayer's action for the recovery of 1922 income taxes (No. 2245 at law) having been "dismissed with prejudice" the judgment of the United States District Court for the District of Minnesota, Third Division, in that case is forever conclusive, and the court below was concluded by the judgment of the District Court for the District of Minnesota, Third Division, in case No. 2245 at law in that court, and was without power, authority, or jurisdiction to render a judgment in the instant case in favor of the plaintiff for the recovery of any income taxes whatever for the year 1922, and this Court similarly erred in affirming the decision of the court below for recovery of 1922 taxes alleged to have been paid.

This point, although raised in the court below, was not stressed in the brief filed by the appellant before argument in this Court, since the theory urged by the United States, if approved by this Court, would have made consideration of this point unnecessary.

We deem it unnecessary to elaborate on the effect to be given the dismissal of a court action "with prejudice." The taxpayer's action for refund of its 1922 taxes deemed overpaid was dismissed "with prejudice" by the United States District Court, for the District of Minnesota, Third Division, on August 1, 1933 (R. 144). That having occurred, the taxpayer might never again bring an action for the recovery of its 1922 taxes. This does not mean that the taxpayer after August 1, 1933, was without any right of action of any kind in the situation in which it thereafter stood. It does mean that after the dismissal of the taxpayer's 1922 suit for refund (No. 2245 at law) with prejudice, the taxpayer could not sue again for refund of 1922 taxes and coud not maintain this action for 1922 taxes. Cf. Bowe-Burke Mining Co. v. Willcuts, 45 F. (2d) 394 (D. Minn.). What the taxpayer could do after the dismissal of its first suit is a different matter.

The court below was of the opinion (R. 108–109) that the taxpayer's original suit for refund of 1922 taxes having been dismissed with prejudice, the taxpayer could thereafter bring its present action for refund of 1922 taxes. The short answer to this is that the present action cannot be allowed without ignoring and denying any effect whatever to the dismissal with prejudice and instead treating

he dismissal with prejudice as a dismissal "without prejudice." That cannot be done. The dismissal with prejudice must be given effect.

The court below expressed the opinion (R. 109) that, after the dismissal of the taxpayer's original action for refund of 1922 taxes (No. 2245 at law) with prejudice, the taxpayer was in a position somewhat like that of a man who had brought suit on an unliquidated claim, taken the debtor's promissory note in some agreed amount, and then dismissed his suit on his unliquidated claim. The court observed (R. 109) that a suit on the note under such circumstances would not be affected by the prior dismissal with prejudice. What the court failed to observe was that the taxpayer in the instant case is not suing on the certificate of overassessment issued by the Commissioner in July 1933 (R. 145), for the year 1922 (before case No. 2245 at law was dismissed in the United States District Court for the District of Minnesota, Third Division), claiming that upon the issuance of the certificate of overassessment for 1922 an account was stated in its favor, permitting the taxpayer to sue the United States in the Court of Claims upon an account stated theory (Bonwit Teller & Co. v. United States, 283 U. S. 258), but on the contrary, the taxpayer is suing for precisely what it sued for in the action dismissed with prejudice, to-wit—income taxes alleged to have been overpaid for the year 1922. We submit that the taxpayer could not do this; that the dismissal of case No. 2245 at law in the United States District Court, for the District of Minnesota, Third Division, with prejudice, is a bar to the present action brought in 1934 for the recovery of income taxes paid by the taxpayer for the year 1922; and that the District Court had no jurisdiction to entertain the present action for 1922 taxes.

Wherefore, it is respectfully urged that the petition herein be granted, and that the opinion of the Court be withdrawn, and that an opinion be rendered herein reversing the decision of the court below, if not in its entirety, at least in so far as that court rendered judgment for the recovery of income taxes paid by the taxpayer for the year 1922.

Respectfully submitted.

JAMES W. MORRIS,
Assistant Attorney General.
SEWALL KEY,
NORMAN D. KELLER,
WARREN F. WATTLES,
Special Assistants to the Attorney General.
VICTOR E. ANDERSON,
United States Attorney.
LINUS J. HAMMOND,
Assistant United States Attorney.

Certificate

The United States of America, appellant herein, by its attorneys, hereby certifies that the foregoing petition for rehearing is not presented for the purpose of delay or vexation, but is, in the opinion of counsel, well founded in law and proper to be filed herein.

JAMES W. MORRIS,
Assistant Attorney General.
SEWALL KEY,
NORMAN D. KELLER,
WARREN F. WATTLES,
Special Assistants to the Attorney General.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, July 11, 1938.

Order denying petition for rehearing

May Term, 1938

Monday, July 25, 1938

The petition for rehearing filed by counsel for appellant in this cause having been considered, It is now here ordered by this Court that the same be, and it is hereby, denied.

July 25, 1938

Clerk's certificate

United States Circuit Court of Appeals, Eighth Circuit

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Minnesota as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States in a certain cause in said Circuit Court of Appeals wherein the United States of America was Appellant and C. T. Jaffray, R. H. M. Robinson, and S. M. Archer, as Trustees of the Estate of Minnesota and Ontario Paper Company, a corporation, Debtor, were Appellees, No. 11023, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the twelfth day of August A. D. 1938 a mandate was issued out of said Circuit Court of Appeals

in said cause, directed to the Judges of the District Court of the United States for the District of Minnesota.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this fourteenth day of October A. D. 1938.

[SEAL]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1938

Supreme Court of the United States

Order allowing certiorari

Filed November 21, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted and the case is assigned for argument immediately following No. 416.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice REED took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1938